

REPORT OF CASES
DETERMINED IN THE
COURT OF NIZAMUT ADAWLUT,
FROM JULY TO DECEMBER 1853.
WITH AN INDEX.

Vol. III. Part II.

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OR

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S.

SELLING GIRLS FOR PROSTITUTION.

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STEALING.

In stealing from a house, there must, under the Mahomedan law, be a secret entry into the house by night, though a subsequent violence after a stealthy and clandestine entry will not take away the character of theft,	143
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T.

TAZEER.

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2. Three prisoners convicted of theft, and sentenced to four years' imprisonment,	208

3. Prisoner convicted by the sessions judge of theft attended with wounding, and sentenced to transportation for life; the sentence being referred for the confirmation of the Court, the Court held, from the nature of the wound and the character of the weapon, that the murderous intent was not proved, and sentenced the prisoner to five years' imprisonment, ...	228
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5. Prisoner convicted of theft with attempt to murder, by throwing a boy into a well, and sentenced to fourteen years' imprisonment, ...	293
6. Conviction and sentence in a case of theft and receiving stolen property, affirmed in appeal, ...	846
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WITCHI.

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WOUNDING.

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1. The prisoner was convicted of wounding a boy with intent to murder him, and robbing him of his ornaments, and sentenced to imprisonment for life in transportation, ...	9
2. Prisoner convicted of severely wounding the prosecutor, sentenced to five years' imprisonment and his accomplices to four years. Appeal rejected, ...	84
3. Prisoner convicted of wounding, with intent to murder, and sentenced to imprisonment for fourteen years, ...	323
4. Prisoner convicted by the sessions judge of wounding with intent to murder. In appeal the intent to murder was held not to be proved, and the sentence reduced, ...	394

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6. Prisoner convicted of wounding with intent to murder his wife, sentenced to ten years' imprisonment. Appeal rejected, ...	641
7. The prisoner, a sepoy, convicted of wounding with intent to kill a man and wife, who lived in the same homestead with him, and from which they desired to oust him, was sentenced to fourteen years' imprisonment in banishment. Appeal rejected, ...	713
8. Conviction and sentence passed by the sessions judge in a case of wounding, affirmed in appeal,	936

C A S E S
IN THE
NIZAMUT ADAWLUT.

PRESENT:
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND PREM CHOWDHRY,
versus
GUNSHIEM, FAQUEER GWALLA, TIRBHOOWUN
AND KOOTOHUL.

Bhauglepore.

CRIME CHARGED.—1st count. Dacoity and plunder of property to the amount of rupees 3,608-6; 2nd count, Receiving and possessing plundered property, knowing at the time of receiving it, that it had been obtained by dacoity and plunder.

1853.

CRIME ESTABLISHED.—Receiving and possessing plundered property, knowing at the time of receiving it, that it had been obtained by dacoity and plunder.

July 1.

Committing Officer.—Mr. R. O. Heywood, magistrate of Bhagulpore.

Case of
GUNSHIEM
and others.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 26th May, 1853.

Remarks by the sessions judge:—Prisoners plead “not guilty.” On the night of the 18th of December last, a dacoity with open violence took place in the main street of the large village of Muhadewa on the high road between Bhagulpore and Monghyr. The house of Prem Chowdhry, complainant, was forcibly entered, and property to a considerable amount stolen. Prem states, that he was sleeping in the southern verandah of his premises, his family being inside, when he heard a noise at his door, and waking up saw the light of *mussals* through the chinks, he thought it was some gentleman travelling by dawk,

Conviction of
receiving pro-
perty obtained
by Dacoity
upheld, but
sentence re-
duced and ex-
cessive fine
under Act 16
of 1850 entire-
ly remitted.

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1853.

July 1.
Case of
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and others.

and that the bearers perhaps wanted something to eat, he went to open the door, when it was forcibly entered by cutting the fastenings, and a number of men twenty or more with six lighted *mussals*, in tightened *dhootees* and faces bound up in cloth, rushed in and struck him with their *latees*, he then escaped and went out to rouse the neighbours, does not recognize any of the prisoners as concerned in the dacoity; knew them by sight before, but was in such a state of confusion at the time that he might, or might not have recognized them, had they been there.

Witnesses, Nos. 5, 6, 7 and 10, are all near neighbours; heard Prem's call and got up and saw the dacoits and lighted *mussals*; distinguished some of them as residents of Puhpore, but did not know their names; had occasionally seen them in the bazar; they were threatened by them with death if they left their houses; they heard a noise from Prem's house as if breaking open boxes; do not recognize any of the prisoners as concerned in the dacoity of the night of the 18th of December; knew them all before by sight, should have recognized them if they had been among the dacoits.

The dacoity took place, on Saturday, the night of the 18th, or nearly on Sunday morning, of the 19th December. On the same morning of the 19th, notice was given at the thannah, four *coss off*, by witness, No. 11. On the same day prosecutor's deposition was taken, and a list of the property stolen given in. On the 20th Sham Singh, Pertum Singh, Jhundee Singh, Zalim Singh, Jeeah Moosohur, Horil and Jhummun, were apprehended on evidence of eye-witnesses. These have all been acquitted by the magistrate, the evidence breaking down in their identification. On the 21st of December, the houses of prisoners, 7, 8 and 9, were searched on a requisition of Prem Chowdhry, complainant, who requested that search might be made in the houses of the *dharee* and *gwalla* tribes in *mouzahs* Pearea and Burrearpore. On the darogah's first arrival with his *jumadar* at Burrearpore, an empty *taut* bag was found in the field of one Hurchurn. Then on apprehension of Gunsheam, prisoner No. 7, he, Gunsheam, pointed out two *taut* bags, containing pice worth 39 rupees buried in an opium field, and on searching the houses, two small parcels of pice, worth about two rupees four annas were found in Gunsheam's house, and two parcels of pice, worth two rupees five annas in Faqueer's house, one in dwelling-house, the other concealed under some cow-dung in the cow-house, an empty *taut* bag was taken from the house of Tirbhoojun, also a *koolharee* with broken edge, which complainant states to be that with which his boxes were broken open; Kootohul, prisoner No. 10, is son of, and lives with, prisoner, No. 9.

Kootohul has before been imprisoned three years for theft in the Monghyr jail. Prisoners, Gunsheam and Faqueer both at the thannah and before the magistrate state, that they had watered their fields one Monday evening when a boy (Ram) who was tending calves in a neighbouring field, came running to tell them that some men were sitting in the *ruhar* (high crop yielding dal) they went and saw some men (whom they name) who on seeing them ran away leaving the two bags of pice which they, Gunsheam and Faqueer, took up and buried in their opium field.

Prisoners Gunsheam, No. 7, and Faqueer, No. 8, before this court tell nearly the same story, adding that they at the time of finding the bags gave information to the chowkeedar Satun (witness, No. 14) who advised their concealment till the darogah came, they further state that Satun on the night of the dacoity, called several times at their doors and always found them at home; the pice found in their houses, they say, was their own. Satun being called as a witness for the defence, denies having been told of the buried bags before they were pointed out to the police, but states that he did find both Gunsheam and Faqueer in their houses on the night of the dacoity.

The other witnesses for the defence of these two prisoners, all speak to their good character.

Tirbhoojun and Kootohul deny all knowledge of the crime, declare the bag and *koolharee* found in their house, as their own property and attribute enmity to Satun, who accuses them of being absent from their houses on the night of the robbery; Kootohul pleads an alibi, their witnesses to character are not examined, there being no cause against them.

The jury bring in a verdict of not guilty, as regards Tirbhoojun and Kootohul, guilty of the 2nd count, against Gunsheam and Faqueer, in which finding I concur.

There is no evidence to convict any of the prisoners on the first count of the charge. On the contrary, I am of opinion that they were not concerned in the actual dacoity. On the 2nd count, the fact of the prisoners, No. 7 and No. 8, Gunsheam and Faqueer, being in possession of some of the stolen property and of their concealing the same for their own use, is fully and clearly proved against them, the only question that remains is, as to their knowing that it had been obtained by dacoity and plunder. I believe that they were aware of the fact. I am of opinion, judging from the evidence for the prosecution, from the unvarying attestation for the defence as to character, from the demeanour of the prisoners and general circumstances of the case, that the prisoners, Gunsheam and Faqueer, became possessed of the property found

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and others.

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**Case of
GUNSHEAM
and others.**

on them by the division of the plunder by the dacoity happening to take place in their field, and their becoming (it does not appear how) cognizant of it. I have no doubt of their guilt as receivers and participators in the spoil, knowing the same to have been obtained by dacoity and plunder, and sentence them to seven years' imprisonment with labor and irons and to pay a fine of rupees 3,561-7-4½, as shown in the statement above.

Prisoners Tirbhooowun and Kootohul are acquitted, the bag and *koolharee* found in their houses, not being satisfactorily identified, the former being different in size and shape to those containing the pice found in Gunsheam's field, and the *koolharee* (not produced in court) being the common implement of the country and to be found in every labouring man's house, I am of opinion, Kootohul's former bad character was the cause for his being suspected in this instance, the police seems to have been very negligent in allowing the real dacoits to escape, the alarm was general and promptly given, the direction they had taken known, the country open, and a clue, in the finding of these bags obtained which might have been made more of.

Remarks by the Nizamut Adawlut (present Mr. H. T. Raikes).—The confessions of the prisoners fully admit the fact of the pice having been in their possession and concealed by them in their poppy field. The sessions judge says, he does not consider them to have been directly concerned in the dacoity, or with the gang who committed it, but that they happened to come upon the dacoits when sharing their plunder, and compelled them to give them a share also of the stolen property. I observe from the petition of appeal that the prisoner's poppy *kheth*, is adjoining the prosecutor's premises, and they allege the pice was either left or secreted there by the dacoits after the robbery, and some days afterwards found by them. They also admit having known of the robbery, and that they all along believed the pice to be some of prosecutor's property. It is impossible therefore to suppose that they concealed the pice with any other intention than a wish to possess it, with full belief that it had been stolen from the prosecutor. I therefore uphold the conviction of the prisoners; but as the sessions judge considers them innocent of any direct participation in the robbery, and there is nothing on the face of the proceedings to warrant a presumption, that the prisoners were connected with the actual perpetration of the crime, I think a more mitigated sentence than that passed by the sessions judge is sufficient for the ends of justice, and therefore reduce the period of imprisonment to three years with labor and irons, and remit altogether the fine imposed under Act 16 of 1850.

The excessive nature of the fine was remarked upon by the judge (Mr. Colvin) on a revision of the monthly statements, and an explanation called for from the sessions judge. This explanation has not yet arrived (it is not filed with the record of the case,) but the order now given, disposes of the case.

1853.

July 1.
Case of
GUNSHKAM
and others.

PRESENT:
H. T. RAIKES, Esq., *Officiating Judge.*

BESHOO SUTWA,

versus

SREEKANT TEWAREE (No. 1), RUGHOO MYTEE
(No. 2), AND JADOO MYTEE (No. 3).

Midnapore.

CRIME CHARGED.—The prisoners are charged with dacoity, accompanied with wounding in the house of the prosecutor (they wounded his brother, witness No. 11), and plundered property to the value of Company's rupees 88-13; 2nd count, with aiding and abetting in the above; 3rd count, with knowingly receiving, and having in their possession property acquired by the above dacoity.

1853.

July 1.
Case of
SREEKANT
TEWAREE and
others.

CRIME ESTABLISHED.—Dacoity attended with wounding, and knowingly having in their possession property acquired by dacoity.

Conviction of
Dacoity with
wounding up-
held in appeal.

Committing Officer.—Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 19th April, 1853.

Remarks by the sessions judge.—The prosecutor deposes that at 2 A. M. on the night of the 7th February, his house was attacked and broken into by a gang of dacoits, armed with sticks, lighted *mussals*, &c., that after maltreating some of the inmates, they made their escape, carrying with them property to the value of rupees 88-13. This statement is corroborated by the witnesses, Nos. 1, 2 and 3, who were with many others attracted to the spot by the alarm that was raised, and saw the dacoits making off with their booty. These witnesses likewise depose that they pursued and succeeded in arresting the prisoner No. 1, Sreekant Tewaree, and that they likewise caught the prisoner No. 2, Rughoo Mytee, but that he was forcibly released by his accomplices. The prisoners in this court deny their guilt. Sreekant Tewaree pleads that he was in a bad state of health, and was proceeding to Midnapore for medical advice when he was seized, ill-treated by the prose-

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cutor, and the witnesses, and accused of robbery. The prisoner, Rughoo, pleads an *alibi*, which he fails to establish. The prisoner, Sreekant Tewarce, confessed to the darogah in the mofussil, and stated that he, the prisoner, Rughoo Mytee, his brother and others, burglariously entered the house of the prosecutor, and that he was caught in the act of making his escape. This confession is corroborated by the evidence, except as regards the identity of the prisoner, Jadoo Mytee, and leaves no doubt as to the guilt of the prisoners Nos. 1 and 2. The prisoner, Sreekant, is an old offender. He underwent a sentence in the jail of the zillah of three years for theft, under a different name, parentage and place of residence to those which he now gives. He also gave different names before the darogah and the magistrate in the present case. He is unquestionably a dangerous character, and was probably the instigator and prime mover of the dacoity, of which he is now accused. Rughoo Mytee has also been arrested several times on charges of dacoity, but his conviction has not ensured for want of evidence. The dacoity, has been aggravated by the violence used ; one of the inmates of the prosecutor's house, the witness, Sutrooghun Satooa, having received from the robbers a severe blow on the head, from the effects of which he did not recover for a month. The prisoners Nos. 1 and 2, are accordingly sentenced as indicated in the statement.

Sentence passed by the lower court.—Prisoner No. 1, to fourteen years' imprisonment. Prisoner No. 2, to ten years' with labor in irons in banishment, and to pay a fine of Co.'s rupees 88-4-10, under Act XVI. of 1850, and prisoner No. 3, acquitted.

Remarks by the Nizamut Adawlut (present Mr. H. T. Raikes). The evidence of the chief witnesses given in their several depositions taken by the police, and before the souzdarry and sessions courts, fully establishes the facts detailed by the judge in statement No. 6, on which he grounds their conviction—I see no reason to interfere with the sentence passed on the prisoners.

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND KUNAIE MISTREE,
versus
DHURMOO DOSS AND LUCHMUN DOSS.

CRIME CHARGED.—1st count, attempt to commit dacoity in the house of the prosecutor attended with wounding of the prosecutor on the 14th January, corresponding with 2nd Maugh, 1259, B. S ; 2nd count, with going forth in a gang to commit dacoity ; 3rd count, with having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Attempt to commit dacoity.

Committing Officer.—Mr. A. W. Russel, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge, on the 10th March, 1853.

Remarks by the sessions judge.—This attempt at dacoity took place in thannah Obpore, on the 14th of January, 1853.

The prosecutor, Kunaie Mistree, states that on the night of the occurrence, he, after eating, went to sleep; that his brother, Bullo, was sleeping in the northern part of the compound, and his father, Byaram, in the southern, and that about one or two in the morning, the whole household were roused out of their sleep by the noise of his uncle, Khola, an invalid, who declared that dacoits were breaking in. He caught up his *lattee* and rushed out, and was met by some fourteen or fifteen men with *mussals*, &c.; that he fought as he best could and was struck in the row, but he cannot say by whom, and that he at last drove them out of the place, securing prisoner, Dhurmoo Doss (No. 20) in his attempted flight, but that he did not recognize any one else. Nothing was taken and all the rest of the men escaped. He gave intimation at the thannah, the next morning, and when the darogah came, the prisoner confessed.

The prosecutor's father and brother (witnesses Nos. 1 and 4) depose to all the circumstances as told by him.

Kandoora, witness No. 2, relates all the circumstances detailed above; he recognized Puncha, Dhoorpoo, &c., ten or eleven men amongst the dacoits, and saw Dhurmoo Doss seized.

Witnesses, Nos. 3 to 6, the neighbours of the prosecutor, heard the noise caused by the attack and went to the spot, when they found Dhurmoo Doss caught in the act.

Rungpore.

1853.

July 1.
Case of
DHURMOO
DOSS & LUCH-
MUN DOSS.

Conviction
of attempt to
commit Dacoity upheld in
appeal, but sentence though
severe not mi-
tigated, with
reference to
local considera-
tions for
the necessity
of severity.

8 CASES IN THE NIZAMUT ADAWLUT.

1853.

July 1.
Case of
DHURMOO
Doss & LUCH-
MUN Doss.

Witnesses. Nos. 1, 3, 4, 5 and 7, to the confessions before the darogah.

Witnesses. Nos. 8, 9 and 10, to the confessions before the magistrate.

Dhurmoo Doss, prisoner No. 20, confessed before the darogah and magistrate, but pleaded not guilty before the sessions court, and states that he was going to his brother-in-law's that night, when he was seized by the prosecutor and accused falsely ; he calls three witnesses to prove his respectability, his brother (witness No. 14) his uncle (witness No. 11) and another man, who all depose to his being respectable.

Luchmun Doss, prisoner No. 21, pleads not guilty ; he confessed before the darogah and magistrate, but before the sessions, declares he had a feast at home and never left his house that night, and that his confessions were extorted by ill-usage. He calls six witnesses, who prove that there was a feast, but they left it at 10 o'clock and he can offer no proof of ill-usage, the witnesses to the confession clearly declaring it voluntary.

I tried the case alone under Act XXIV. of 1843, and convict both Prisoners and sentence them to ten years each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The conviction is good on the evidence. As no property was lost, and the bodily injury to the prosecutor was slight, a sentence of less severity might have sufficed ; but local considerations and circumstances may probably render some degree of severity necessary. I shall not, therefore, interfere with the sentence.

PRESENT:

J. DUNBAR, Esq., Judge.

BHAGBUT SABOOT AND GOVERNMENT,

versus

SIBOO SAIIOO.

CRIME CHARGED.—1st count, wounding with intent to murder Chytun Saboot, son of Bhagbut Saboot, prosecutor; 2nd count, robbery from the person of Chytun Saboot of ornaments valued at rupees 1-15, and with wounding on the 29th March, 1853.

Committing Officer.—Mr. E. Drummond, magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 31st May, 1853.

Remarks by the sessions judge.—It appears from the deposition of Chytun Saboot (the lad who was robbed and wounded) and the mofussil confession of Siboo Sahoo, who live in adjoining villages to one another, and have been in the habit of consorting together; that about noon, on Tuesday, the 29th of March last, Siboo Sahoo called Chytun Saboot to accompany him to take some honey, which he had discovered in the neighbouring jungle, and that as they were proceeding to, and had arrived near the spot indicated, Siboo Sahoo assaulted Chytun Saboot and threw him down and having made a cut about four fingers in length on his neck across the right jugular artery, and inflicted several smaller wounds about his face with a *Kelkuttee* or instrument used for cutting beetle-nuts, robbed him of his ornaments valued at rupees 1-15, and then supposing him to be dead, pushed his body among some bamboo trees and went himself to the *haut* or market. But fortunately for the prisoner as well as Chytun Saboot, he, notwithstanding an immense loss of blood, sufficiently recovered to extricate himself from his perilous position, and found his way to his house about fifteen beegahs from the place of occurrence, where he informed his mother and other relatives that the prisoner, Siboo Sahoo, had wounded and robbed him.

Information was then communicated to the prosecutor, who was absent from home and likewise to witnesses, 1 and 2, the village police who searched for the prisoner at his house, but being absent, he was not found till the evening, when he was arrested in his own village; and on being questioned, he denied either having wounded Chytun Saboot or stolen his ornaments. But on the following Thursday he confessed before the police darogah and after producing the ornaments, pointed out the

Cuttack.

1853.

 July 2,
 Case of
 SIBOO SAHOO.

The prisoner was convicted of wounding a boy with intent to murder him, and robbing him of his ornaments, and sentenced to imprisonment for life in transportation.

10 CASES IN THE NIZAMUT ADAWLUT.

1853.

place where the crime was committed, at which was seen a large quantity of clotted blood in two places.

July 2d.

Case of
SIBOO SAHOO.

There were no eye-witnesses to the fact, neither could the instrument with which the wounds were inflicted be found in the place, where the prisoner stated that he had thrown it away. But it is fully established in evidence 1st, that Chytun Saboot immediately after the occurrence, charged Siboo Sahoo, the prisoner, with having wounded and robbed him; 2ndly, that the prisoner produced from his person the ornaments which were stolen from Chytun Saboot's neck, and pointed out the place where he committed the crime; and 3rdly, that the prisoner of his own free will and accord recorded his confession before the darogah in the presence of the subscribing witnesses.

Before the magistrate and this court, Siboo Sahoo pleaded not guilty, but advanced nothing in defence, which in any way exculpates him.

Chytun Saboot was not forwarded to the station hospital in consequence of the exhausted state he was in, and consequently there is no professional medical opinion on record, as to the extent of the wounds.

The futwa of the law officer convicts the prisoner Siboo Sahoo, of the crimes charged on both counts, and fully concurring in the said verdict, I consider myself bound to recommend that he be imprisoned for life in transportation beyond sea, as from the reduced and exhausted state in which Chytun Saboot remained for some time after the occurrence, and the fact of the prisoners having pushed him into the bamboo jungle and left him supposing him to be dead as acknowledged in his confession, there can exist no doubt that he fully intended to kill him. The age of the prisoner which is only seventeen years may however induce the court to sentence him to a limited period of imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The precedents in the published Reports of cases disposed of in this court, shew that persons not nearly so old as the prisoner, have in several instances been sentenced to imprisonment for life on conviction of the murder of children for the sake of their ornaments. It is true that in this case murder has not actually been committed; but that the prisoner intended to kill the boy, appears to be beyond question. Indeed, when he thrust the body into the jungle, he evidently thought that life was extinct. The fact of the prisoner having taken with him the *kelkhattee*, an instrument not fit to be used for the purpose of gathering honey, and having afterwards thrown it away, affords strong ground for presuming that the crime was premeditated. Concurring in the convic-

tion, and seeing nothing in the case which should indicate the propriety of a sentence of only temporary imprisonment, I sentence the prisoner Siboo Sahoo to be imprisoned for life in transportation beyond sea.

1853.

July 2d.
Case of
SIBOO SAHOO.

PRESENT:

J. R. COLVIN, Esq., *Judge*; AND H. T. RAIKES, Esq.,
Officiating Judge.

GOVERNMENT,

versus

HEERAH DHOBEE.

CRIME CHARGED.—Perjury.

Committing Officer.—Mr. A. E. Russel, magistrate of Purneah.

Tried before Mr. G. G. Mackintosh, Officiating sessions judge of Purneah, on the 8th June, 1853.

Remarks by the sessions judge.—The prisoner was charged with perjury, committed before the magistrate of Purneah, in a case of theft of buffaloes preferred by Datah Ram, versus Jumceerah.

The prisoner, in the first instance, deposed that he identified six buffaloes, as the property of the prosecutor by certain marks upon their buttocks. It appearing, that only two of the number were marked in the manner indicated, the magistrate questioned him as to how he recognized the remaining four, upon which he stated that he did not identify them, nor did he know to whom they belonged—upon being questioned regarding this discrepancy, he denied his previous evidence.

These facts are deposed to by two witnesses, Chunderpersaud and Ram Sahoo, who were present when the prisoner gave the above evidence before the magistrate.

The prisoner pleaded guilty, but urged in extenuation that he had never before appeared in court, and that he had given this contradictory testimony through inadvertence.

The futwa of the law officer acquits the prisoner upon the grounds, that the crime proved against him does not amount to perjury.

I cannot coincide in this verdict; the contradictory statement made before the magistrate upon so important a point, as the identification of the property in a case of theft, clearly amounts to the crime charged against the prisoner.

The case in which the prisoner gave the evidence originated in a claim preferred to some stray buffaloes by the

Purneah.

1853.

July 4.
Case of
HEERAH
DHOBEE.

Prisoner convicted of perjury and sentenced to six months imprisonment. The original deposition as to which the contradictions are charged should be placed on the sessions record.

12 CASES IN THE NIZAMUT ADAWLUT.

1853.
July 9.
**Case of
HEERAH
DHOBEE.**

prosecutor, Data Ram, who deposed to their having been stolen from him four years previously, and that he suspected Jumeerah of having stolen them, and the purport of the evidence of the prisoner, appears to have been solely to substantiate Data Ram's claim to the animals; coupling this with the prisoner's plea, and his manifest ignorance, I am of opinion that his counter statements are attributable rather to the careless disregard of truth so generally evinced by natives, than to any premeditated evil or fraudulent intention, and under these circumstances, I do not consider the case to call for a severe punishment, and I beg to recommend that a mitigated sentence of imprisonment for one year, with labor should be passed upon the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin and Mr. H. T. Raikes.)—This is a case of perjury, but not of a serious character.

There is no doubt that the prisoner contradicted himself about the identification of the buffaloes. Indeed, he made a second contradiction not stated in the charge, for (see question and answer *nine* of his deposition) he again said that he recognized *all six*. This, the law officer says, was consistent with his first answer, though he had varied intermediately and he would, on that ground among others, acquit the prisoner.

We think the contradiction on a point material made out, but would sentence to even less than the judge recommends. The *whole recognition*, (that is, of *all* the animals) does not seem to have been false—and there was, it is possible enough, no deliberate fraudulent purpose. We convict the prisoner Heerah Dhobee of perjury, and sentence him to imprisonment for six months with labor.

There is some irregularity in the proceedings. The original deposition, as to which the contradictions are charged, should have been placed on the sessions record. The witnesses are not to a *solitary confession*, as the calendar enters them—and *both* the witnesses should have been asked whether the prisoner had been sworn, and should have been required to acknowledge their signatures to the depositions.

The deposition, however, is sufficiently proved. The prisoner indeed, admits its accuracy by his plea of guilty.

PRESENT:

J. DUNBAR, Esq., Judge.

SEBOO TEELEE AND GOVERNMENT,

*versus*BHYRO (No. 5), SOOPHUL (No. 6), MEGHOO (No. 7)
AND JEEBLALL alias KOELA (No. 8).

Bhaugulpore.

CRIME CHARGED.—1st count, Highway robbery of property valued at Rs. 6-10-6; 2nd count, Assaulting the prosecutor on the road amidst the jungle, and snatching from him one *Rezai*, one *Dohur* and clothes valued at Rs. 6-10-6.

1853.

CRIME ESTABLISHED.—Highway-robery of property, valued at Rs. 6-10-6.

July 9.

Committing Officer.—Mr. G. G. Balfour, magistrate of Monghyr.

Case of
BHYRO and
others.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 19th April, 1853.

Remarks by the sessions judge.—Prisoners all plead “*not guilty*.[”]

The prisoners were convicted on a charge of highway robbery and sentenced by the sessions judge. The sentence was confirmed in appeal in regard to 3. In the case of the 4th, it was reduced.

Prosecutor is a trader, he was going with his servant Bundoo and five bullocks to collect his debts in grain at the village of Panroo, when near the cattle-shed of one Gurboo, in some jungle by the village of Noomier, he was set on from behind, by prisoners and some four others, none of whom he had ever seen before, who threw him down and beat him, and robbed him of all his clothes, what he had on and what he was carrying in a bag, as also his servant whom they stripped of his *dhotee*; when this happened, Bunowdeah Moosuhur witness No. 1, was a short distance ahead of him, going the same road with a load on his head; prosecutor gave immediate notice at the nearest Thanna about three miles off, and when the Mohurris came to make enquiries, Bunowdeah pointed out the prisoners who were also recognized by prosecutor as those who had robbed him; none of the stolen property was found in their houses, but a *dhotee* of *markeen-cloth* on the person of Bhyro was sworn to by prosecutor as having belonged to him, the robbery took place on a high-road travelled by wheel carriages about 7 A. M. of the 15th December, and prisoners were apprehended on the following day. The witnesses Nos. 1 and 2, for the prosecution give the clearest evidence of these facts. The prisoner Bhyro is an old offender, having been imprisoned for two years for theft, as certified by the foudary records. Witness No. 1, who pointed out the prisoners, did not recognize the other four, who were with them at the time. Witnesses Nos. 6, 7, 8 and 9 speak to the bad character of all the

14 CASES IN THE NIZAMUT ADAWLUT.

1853.

July 9.

Case of
BHYRO and
others.

prisoners, and to their having no ostensible means of livelihood. The *dhotee* found on the person of Bhyro, and said to have been stolen from prosecutor could not be easily identified, and prosecutor's own accounts of its recognition here and in the foudary, are contradictory ; I reject this part of the evidence.

Prisoners plead enmity on part of prosecutor, and state they have ample means of livelihood, that Bunowdealh, witness No. 1, is a *budmash* and has taken money to bear false witness against them ; their witnesses, without exception, depose to their being evil disposed persons.

The Jury bring in a verdict of guilty against all the prisoners on the first count charged against them, in which I fully concur.

This was clearly a highway-robbery with open violence, but without any very aggravating circumstances ; prosecutor and his servant sustained no bodily injury to speak of, and with the exception of Bhyro No. 5, the prisoners though bad characters are not notorious offenders, Bhyro is evidently not only an old offender, but the leader of this party. With reference to his former imprisonment and leadership of this gang, I sentence him, Bhyro, to be imprisoned for ten years, the other prisoners Soophil, Meghoo and Jeeblall for seven years, all with labor and irons, and to pay a fine of Rs. 6-10-6, as shown in the statement above.

Bhyro and Jeeblall escaped from custody after committal to the sessions, and were not retaken for seven days.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—I see no reason to doubt the truth of the evidence as to the fact of the robbery. The prisoners were recognized and sworn to, by the prosecutor and his man Bhundoo, only after they had been apprehended, according to the deposition of Bunowdealh ; but the prosecutor distinctly said, when lodging his complaint, that although he did not know the names of the persons, who had robbed him, he should know them again, were he to see them, and the truth of the recognition is in a manner put beyond question, by the answers to the charge, in the Mofussil of Jeeblal, alias Koela and Soopul. The former denied having taken a part in the robbery, but admitted that he had seen the three other prisoners commit it ; while the latter said that if such a robbery really was committed, Bhyro and Koela must have done it. The cloth [*dhotee*] found upon the person of Bhyro may, or may not be the property of the prosecutor ; but in his examination before the magistrate, Bhyro disclaims the ownership, and asserts that the prosecutor, had himself produced it, and falsely charged him with the theft.

The sessions judge has awarded a heavier punishment to Bhyro than the others, partly on the ground that he was the principal in the robbery; but as both the prosecutor and his man Bhundoo distinctly said, in the Mofussil, that *Koela* alias *Jeeblal* alone seized the former by the throat, and threw him down, I reject their subsequent evidence, to the extent of their implicating Bhyro also in this act. I do not think, therefore, that it would be just to punish Bhyro more severely than *Jeeblal* alias *Koela*. His sentence is accordingly reduced from ten to seven years' imprisonment with labor in irons.

1853.

July 9.
Case of
BHYRO and
others.

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

NOBIN BAGDY (No. 2), BHAGEERUT *alias* BHAGNY BAGDY (No. 3), RAMCHUNDER CHUNG (No. 4), SONAOOLLAH (No. 5), KALEE CHUNG (No. 6), KALACHAND CHUNG (No. 7), KANGALEE MUS-SULMAN (No. 8), AND GOBIND CHUNDER BANER-JEA *alias* GOBAY PORUT (No. 9).

Hooghly.

CRIME CHARGED.—1st count, having committed a dacoity attended with wounding in the house of Rajeeblochun Mitter at Mandaram on the 17th June, 1844, and plundering therefrom property to the amount of rupees 403-13-6; 2nd count, with having belonged to a gang of dacoits.

Committing Officer.—Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 30th May, 1853.

Remarks by the officiating sessions judge.—The prisoners, two to nine, are charged with having committed a dacoity attended with wounding on the 17th June, 1844, and plunder of property to the value of rupees 403-13-6, and on a second count with having belonged to a gang of dacoits.

They all plead not guilty before the sessions. Before the commissioner for the suppression of dacoity, the prisoner Bhageerut Bagdy, No. 3, confessed to the charge given in the second count.

The evidence on which the commitment has been made, is that of the approvers, Gopal Doolye and Rakhal Bagdy, witnesses Nos. 1 and 2, who depose very distinctly to the prisoners

1853.

July 9.
Case of
NOBIN BAG-
DY and
others.

The prisoners were convicted of dacoity, and of having belonged to a gang of dacoits, and sentenced to imprisonment for life in transportation.

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1853.

July 9.
Case of
NOBIN BAG-
DY and
others.

having accompanied them in the dacoity, for which the charge on the first count is laid. Their statements correspond with the main facts of the dacoity as shewn on reference to the deposition of the person, on whose house it was committed, taken before the magistrate at the time and with the report of the dacoity then made.

As to the fact of the dacoity, there can be no doubt, and the statements of the approvers are in my mind quite conclusive, as to its having been committed by the gang to which the prisoners belong, but it is to be noted that on the alleged recognition of some of the villagers, other parties were arrested and brought to trial, one of whom was convicted before the sessions judge. These prisoners are not mentioned in the evidence of the approvers, and there is little doubt that at the time the police got hold of the wrong party.

The approvers swear to the prisoners having committed in the same gang with themselves numerous dacoities, and as I consider the defence set up, of the approvers being at enmity with the prisoners, wholly groundless and unsupported, and that there is no reason for which their testimony given should be set aside, I have found the prisoners guilty on the evidence of the approvers, and recommend, as notorious dacoits, that they be transported with labor and imprisonment for life.

Resolution of the Nizamut Adawlut, No. 683, dated the 20th June, 1853.—(Present: Mr. J. Dunbar.)—The court having perused the papers above recorded, connected with the trial of Nobin Bagdy and others, wish to ascertain before disposing of the case, whether there is any confirmatory evidence in existence in regard to the numerous dacoities alluded to in Paragraph 6 of the sessions judge's letter, in which the approvers swear that the prisoners took a part with them. The sessions judge will direct a report to be called for from the *mohafiz* or other officer in charge of the old records, showing whether all or any of the dacoities, mentioned by the approvers, were reported as having occurred about the times mentioned. The court direct that the papers be returned to the sessions judge for the purpose above stated.

With reference to the above Resolution the following explanation, No. 13, dated the 4th July, 1853, was forwarded by the officiating sessions judge:—I have the honor herewith to re-submit the papers of the case, and to state that of the twenty-one dacoities deposed by Gopal Doolye, the prisoners are implicated in eighteen, of which, commission of twelve is certified to by a roobukary of the magistrate of Burdwan and the report of the foujdary *mohafiz* of Hooghly.

Of the twenty-one deposed by approver Rakhal Bagdy, fifteen are the dacoities mentioned by Gopal Doolye and the

perpetration of the rest is certified to by the report of the foudary *mohafiz* of Hooghly, dated 25th August, 1852. These reports were already forwarded to the court with the file which has been returned, and will be found with the confessions of the approvers in pages 83, 65 and 22.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The papers were unnecessarily sent back to the sessions judge through the carelessness of the mohurrir, who was reading them to the presiding judge, and who failed to discern amongst them, the reports referred to, in the judge's letter of the 4th instant. In future the sessions judge is requested to notice in his English report, whatever proof there may be on the record, founded on such documents.

The approvers were kept separate till their original confessions were recorded, so as to preclude the possibility of collusion. The details of the dacoity, with the commission of which the prisoners are charged in the first count, given by the approvers, correspond in all essential points, and are corroborated by the depositions of the person robbed, taken many years ago. According to the original confessions of the approvers, and to their depositions now upon oath, the prisoners were engaged in the number of dacoities stated below:—

	With Gopal Doolye.	With Rakhal Bagdy.
Prisoner No. 2 Nobin Bagdy,	21	21
" " 3 Bhageerut,.....	9	15
" " 4 Ranchunder Chung,.....	6	8
" " 5 Sonaoollah,	16	19
" " 6 Kalla Chung,.....	9	12
" " 7 Kala Chand,.....	4	7
" " 8 Kangalee Mussalman, ...	12	14
" " 9 Gobin Chunder Banerjee, 14	14	19

In the majority of the cases, both the approvers were present. The prisoner Bhageerut No. 3, confessed before the commissioner for the suppression of dacoity, that he had a hand in fourteen cases of gang-robery. The commission of twelve of the dacoities mentioned by both of the approvers, and of six mentioned by Rakhal Bagdy only, is certified by reference to old records.

I concur with the sessions judge in finding the prisoners guilty on both counts, and sentence them to imprisonment for life in transportation.

With reference to the remarks in para. 5, of the sessions judge's letter of the 1st ultimo, measures should immediately be taken for procuring the release of any parties who may have been wrongfully condemned.

1853.

July 9.
Case of
NOBIN BAG-
DY and
others.

PRESENT:
J. R. COLVIN, Esq., Judge.

GOVERNMENT,

versus

SAPOO ALIAS SUNNEEI.

Assam.**1853.**

July 11.
Case of
Sapoo alias
SUNNEEI.

Prisoner con-
victed of high-
way robbery
with murder,
sentenced to
transportation
for life, with
reference to his
youth and the
previous exam-
ple made by
the execution
of three of his
elder associates
in the crime.

CRIME CHARGED.—Highway robbery and murder of Bulloo Ahom, Bijee Ahom, Mussamat Kahdoi and Mussamat Bhagdoi (infant) on the 24th of April, 1851, on the Dhuduralleo in the Booroa Challee mouza.

Committing Officer.—Captain C. Holroyd, magistrate of Sebsaugur.

Tried before Major H. Vetch, deputy commissioner of Assam in June, 1853.

Remarks by the deputy commissioner.—The prisoner Sapoo alias Sunneei Naga, was committed for trial before the sessions court along with No. 1, Allooh, No. 2, Muntaki, and No. 3, Humbug, on the 24th April, 1853, but he effected his escape from the Sebsaugur jail, on the 10th May, 1852, before the hearing of the case; he was re-apprehended, on the 23rd February, 1853, and, on the 6th instant, convicted by this court of escaping from jail, when it was ordered that he should take his trial on the original commitment of the magistrate, vide annexed copy of my proceedings, together with the magistrate's letter and calendar. It does not appear necessary to recapitulate the particulars of the case already detailed in my letter to the court No. G7½ of 27th May, 1852, on Nos. 1, 2 and 3, who were convicted by the Court of Nizamut Adawlut in their proceedings, dated 9th July,* 1852, and sentenced capitally, but only to shew what part prisoner took in the crime with which he stands charged, and it appears from the deposition of the only eye-witness, Rungsoo, that he deprived the deceased Bulloo of his spear, after which Allooh cut down, and killed him (Bulloo), that in conjunction with No. 3, Humbug, prisoner pursued the deceased Bijee, who at the time had the deceased child, Mussamat Bhagdoi, on his back, both of whom they slew, and that he and the others collected the property of the murdered persons and fled to the hills, carrying it with them.

Before the jury and magistrate, the prisoner pleaded guilty to the charge.

Four witnesses prove his apprehension.

Jattee Jemadar
Garrellakutuk-
kee,
Hooarung,
Munpooa.

* See printed reports, page 33.

Three witnesses prove his confession to having been present on the occasion (but passive) and that he received a share of the plunder.

Two witnesses prove his confession before the magistrate, where he admitted that he had thrust the deceased Bijee with his spear, and that he had shared in the plunder.

Witness recognised one of the plundered articles admitted by prisoner to have been part of his share, and as having belonged to the deceased Bijee.

The prisoner, in his defence, went even beyond his confession in the admission made.

The jury returned a verdict of guilty against the prisoner, in which the magistrate concurred, and with the others, for the reasons detailed in his letter, recommended, that they, as well as he, should be transported for life.

As noticed in my original proceedings, there were some discrepancies between the depositions made at different times, by the only eye-witness; but that there was nothing in these to shake my belief on the main points, and coupled with the circumstantial evidence, and the confessions made by the prisoner, Sapoo alias Sunneei, leave no doubt on my mind of his having taken an active part in the murders, as well as of having shared in the plunder, and having thus found him guilty of an atrocious and cold-blooded murder, I consider him justly deserving of capital punishment, but I would, at the same time, beg respectfully to submit for the consideration of the Court of Nizamut Adawlut, whether the law has not already been fully vindicated by the three capital punishments which have been carried out against Nos. 1, 2 and 3, and whether as the youngest of the four (the prisoner being only twenty years old at the time) all the ends of justice, as well as example will not be attained, by sentencing the prisoner, Sapoo alias Sunneei, to transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—The guilt of the prisoner is clear upon the record, and admitted in his own repeated confessions. I convict him of highway robbery with murder; but looking to his youth, and to the marked example which has already been made by the capital punishment of three of his elder associates in the crime, I think it sufficient, in concurrence with the recommendation of the deputy commissioner, to sentence him to transportation for life.

Sentence will issue accordingly.

1853.

July 11.

Case of
SAPOO alias
SUNNEEI.

Jattee Jamadar
Hooarung,
Munpooa.

Judoo,
Roogoo.

Apoosoo.

PRESENT:

J. R. COLVIN, Esq., Judge.

MOOSUMMAT MAKHNA AND GOVERNMENT,

versus

NOBAI CHUNG.

Jessore.

1853.

July 12.

Case of

NOBAI

CHUNG.

Prisoner convicted of wilful murder, but sentenced only to ten years imprisonment, with reference to the circumstances of the case.

CRIME CHARGED.—Wilful murder of Elamdee Sheikh.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore. Tried before Mr. R. M. Skinner, sessions judge of Jessore on the 27th June, 1853.

Remarks by the sessions judge.—From the prisoner's confession before the assistant* magistrate and the sessions judge, and from evidence of Janokee, witness, 6, and Ryemonce, witness, 1, it appears that Janokee was on a visit to her brother, the prisoner, her husband living at the distance of a day's journey. At mid-day, on 5th May, Elamdee accosted her, when she was in a date garden, and misconducted himself towards her. She shrieked, her brother came out of his home, which was near at hand, and Elamdee went away. This agrees with what the prosecutrix heard from her husband, Elamdee, (since deceased.) The plaintiff further states, that, that night, her husband went out, after his meal, to watch sugar-cane; but was carried home wounded: she brought a light and observed a wound on his head, he told her that Nobai had enticed him into his home, the house of witness, 1, who lives near, and struck him over the head with a *kooralee*. Witness, 1, also testifies that Nobai lives in her house and she saw him take a *kooralee* out of the house, afterwards she heard Elamdee cry out. Witnesses, 2 to 5 and 8, came up and found Elamdee wounded. Elamdee declared Nobai had inflicted the wound. Randhun chowkeedar (witness 8) said he found Elamdee wounded and helped him into the verandah of Ryemonce's, witness 1's house. Witnesses 2 to 5 say, they, hearing shouts, ran up and saw the wounded man in the verandah of Ryemonce's house. She told them that Nobai must have struck the blow, because Elamdee had dishonored his sister, Janokee. The wounded man also told Lobaram Biswas, witness 2, Rammohun Mondul, witness 4, Ramcomar Mondul, witness 5, and Randhun, witness 8, that Nobai had felled him for his conduct towards Janokee. Witnesses, after a light was brought, saw the wound on his head, and some of

* On 16th May, 1853, Mr. Belli held a general roobakarry that from 18th idem, Mr. Saunders should perform the current duties until his return from Mofussil.

the witnesses carried the wounded man home. The chowkeedar, witness 8, the next day informed the darogah, who directed Modoo Sing witness 7, to go and see the wound, but no inquest was held till 11th idem, when the mohurir, in the presence of witnesses 7, 8 and 11, took the deposition of the wounded man, wrote a description of the wound and sent him into the station. The civil surgeon deposes that the wounded man reached the charity hospital, on the 12th, and expired on the 13th, but that if he had been sent in sooner for medical treatment, he might have recovered; that the immediate cause of death was the pressure on the brain from suppuration, resulting from inflammation which was not properly treated.

The prisoner confessed both before the assistant magistrate and in this court. In the former confession he said that notwithstanding he had previously begged him not to do so, the deceased had dishonored his sister at noon. At night he saw him near his house, he then went in and fetched a *kooralee* and hit him over the head with it, but he meant to have hit him on the back with the blunt part. He then ran away. Before me he declares that he threw the *kooralee*. Janokee was at Saghur Mundul's that night.

The jury do not consider the prisoner guilty of murder, as they consider that he intended not to kill Elamdee, but to punish him for his misconduct. They give a verdict of *Kutl Shibeh-umd* or manslaughter.

Allowing for the extenuating circumstances in the prisoner's confession, i. e. the insult offered to a sister and the offender being found near the house the same night; yet there is an appearance of premeditation and murderous intent, in going and fetching the weapon and hitting the deceased with it. Death did not ensue for eight days after the wound; but the weapon was a deadly one. I consider the prisoner guilty of murder, but under the circumstances, I conceive that imprisonment for fourteen years would be a proper punishment.

It would appear from the magistrate's order of the 13th May, that the wounded man was too ill to speak when he reached the station, therefore the depositions of those, who brought him in were taken, i. e. the witnesses 7, 8 and 11.

As to the cause of delay, Modoo Sing burkundauze, said that, according to the order of the darogah, he was, on 7th May, about to proceed to the scene of the occurrence, Dhababilla, when the jemadar told him to bring the body of a man who died from the bite of a snake at Kallikatolah. Afterwards there being no other burkundauze in the Thannah, he was on guard at night, by order of the jemadar, who proceeded to Boidangah. On Sunday (8th) evening he heard from a man

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Case of

NOBAI

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of Dhobabilla that Elamdee was at the point of death, he therefore went to the spot on Monday, returned to the Thannah on Tuesday, and on Wednesday departed for the sunder station with the wounded man. The magistrate excused him on 31st May. The *mohurir* was suspended for negligence in not going to the spot himself. His substitute was directed to hold the investigation. But no notice seems to have been taken of the jemadar's preventing the burkundauze from going to the spot, as directed by the darogah. The magistrate, on 31st May, reprimanded the darogah in consequence of his explanation, dated 29th idem.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin).—The material evidence in this case, as to the precise circumstances under which the prisoner struck the deceased on the head with a *kooralee*, is to be found only in the prisoner's own statements. There has been a defect in the investigation on the trial as to the spot at which the wound was inflicted. Ramdhun Chowkeedar, who first heard the cries of Elamdee, and found him wounded, has stated consistently, throughout all his examinations, that the wounding took place in a sugar-cane field, some seventy or eighty yards from the house in which the prisoner was living. The police mohurrir, however, reports that he found traces of blood not there, but within the enclosure of the house of Ryemonee witness No. 1, in which the prisoner resided. Ryemonee herself speaks of the prisoner having *gone out* with a *kooralee*. This matter has not been searched into, and cleared up as much as it ought to have been ; for, of course, if it had been clear that the prisoner had sought out and attacked the deceased while watching his sugar-cane crop, it would have been an important proof of deliberate malice, and would have weighed much in determining the appropriate sentence. As it is, the prisoner is entitled to the benefit of his own statements in the matter, which are, that the deceased coming and sitting down between 8 and 9 p. m. under the eaves of his house, within the outer enclosure of the dwelling, he went inside, took and brought out his *kooralee*, and struck at the deceased with it. There had, even on the prisoner's own showing, been no strong immediate provocation. The prisoner's sister was away for the night in another house. The deceased was sitting down without giving special offence at the moment. There was time for reflection, as the prisoner went into his house for the weapon. The weapon was a mortal one, and death ensued from its use. The crime of the prisoner must, therefore, be clearly regarded as murder. On the other hand his feelings had naturally been excited by the recent intimacy which he had detected between the deceased

and his sister, a married woman. The presence of the prisoner at his house that evening, after the prisoner's discovery of the intimacy during the day, must have been irritating to him. He did not strike more than one blow, and probably, therefore, had no deliberate intention to cause death. On the whole, in convicting the prisoner of murder, I think it sufficient to sentence him to imprisonment with labor and irons for ten years.

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July 12.
Case of
NORIN
CHUNG.

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

GUTTEE RAI, (No. 1,) AND PULLUK RAI (No. 2.)

Sarun.

CRIME CHARGED.—1st count. Wilful murder of Juttoo Rai upon a suspicion of theft. 2nd count. Being an accessory after the fact and privity.

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CRIME ESTABLISHED.—No. 1, Culpable homicide of Juttoo Rai. No. 2, Privity after the fact to the culpable homicide of Juttoo Rai.

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Case of
GUTTEE RAI
and PULLUK
RAI.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 1st April, 1853.

The prisoners were convicted, No. 1 of culpable homicide, No. 2 of privity after the fact, and sentenced by the sessions judge. On appeal the homicide was held to be justifiable and the prisoners were acquitted.

Remarks by the sessions judge. The following is a short statement of the facts of this case. The prisoner, Pulluk, his brother (deceased) and two men named Sewtahul and Belati were coming home from a bazar at night, when passing near the prisoner, Guttee's field, the deceased stopped behind to ease himself and being taken by Guttee for a thief who had come to rob him, was struck so severely by him on the head that he instantly died of the blow. His companions (who had gone on a little) hearing him cry out when struck, turned back and found the prisoner standing over him, and they say, they saw Guttee strike deceased again whilst on the ground. Finding however that the man was dead, both Sewtahul and Belati went off home, leaving only Pulluk and Guttee with the deceased, and Pulluk also (I conclude) seeing that the thing was irremediable, made up matters with Guttee and then aided him in the first place in concealing the body in an old well, and subsequently in burying it in another and safer place; however the police got scent of the affair, and in the end both the prisoners were committed for trial, Guttee has

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from the first said that all the four parties above named, were robbing his field, when he set upon them, when they all fought together; but on his trial, he adds to this, that the deceased was killed not by him, but by a blow from one of his own companions. Pulluk denies that they robbed the field, and speaks of the thing like Sewtahul and Belati, but admits that he agreed to hush up the affair, at the instigation of the prisoner, Guttee, and as there were no other persons present, it is of course impossible to say which of these stories is true, I believe myself that the prisoner, Guttee, having had his field robbed before, was on the look out for the thieves, and seeing the deceased in his field at once felled and killed him, after which he got his brother (Pulluk) to hush up and conceal the matter.

The moulvie convicts Guttee of culpable homicide and holds him liable to *Deout*; and Pulluk, he convicts of privity after the fact; and concurring with him in this finding as regards both prisoners (it appears to me that Sewtahul and Belati were nearly as much to blame as Pulluk), I have sentenced them as noted in the preceding column.

Sentence passed by the lower court--Prisoner, No. 1, imprisonment for (3) three years, and a fine of forty Rs. and, in default of payment, to labor. Prisoner, No. 2, imprisonment without labor and irons for (6) six months.

Remarks by the Nizamut Adawlut.--(Present: Mr. J. Dunbar).--Pulluk Rai, before he was implicated in the crime charged, declared upon oath before the darogah, that the deceased Juttoo Rai, under the pretence of stopping behind his companions to obey a call of nature, went into the field of the prisoner Guttee Rai and began to help himself to the peas. The witnesses Sewtuhul Thacoor and Belati Thacoor both state that when they ran back, and asked Guttee Rai why he had killed the deceased, he at once replied, that he had struck him down, because he was stealing his peas. The statement made in the confession of Guttee Rai, is thus far confirmed, that I see no reason to doubt that, as alleged by him, in his confessions the mortal blow was struck by him when he was engaged in defending himself against one or more of the thieves who had turned upon him. It is scarcely to be expected, that Pulluk Rai or his two companions should admit this, but their conduct affords strong grounds for believing that Guttee Rai has made a true statement; for Pulluk helped to make away with the body, and the other two gave no information at the Thannah, while there is reason to believe, from the evidence of the medical officer to the effect that the deceased could not have spoken after he received the blow, which killed him; that with a view to disconnect themselves

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Case of
GUTTEE RAI
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RAI.

with the charge, they have perjured themselves, in declaring that they ran back on hearing the deceased cry out "*Bap, Bap.*" It might be a question, whether a man who catches another stealing peas from his field at night would be justified in striking him down with the blow of a club, with such violence, as to break his skull; but there can be no doubt, that he would be fully justified in doing so, were the thief to attack him. I consider this case to be one of justifiable homicide, and acquit the prisoner Guttee Rai. With reference to this finding, the prisoner Pulluk Rai must also be discharged. The imprisonment he has already undergone, will no doubt teach him the danger of clandestinely disposing of the body of any one who has died a violent death.

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Case of
GUTTEE RAI
and PULLUK
RAI.

PRESENT :

J. DUNBAR, Esq., Judge.

Beerbohm.

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GOVERNMENT AND RAMANUND DOSS BYRAGEE,

RAMMUN HAREE CHOWKEEDAR (No. 5), SRISTEE-DHUR MUNDEL (No. 6), JUGGERNATH SOW (No. 7) AND MONEF ERAHM NEE (No. 8)

CRIME CHARGED.—1st count. Prisoners Nos. 5, 6 and 7.—Dacoity committed in the house of Ramanand Doss Byragee prosecutor, from whence property valued at Rupees 1,221-2-15 was plundered; 2nd count. Prisoners Nos. 5 and 6. Being accomplices in the abovementioned crime; 3rd count. Prisoners Nos. 6 and 8. Knowingly receiving property acquired by committing the abovementioned crime; 4th count. Prisoner No. 7. With privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—Prisoner No. 5, of being accessory after the fact, prisoners Nos. 6 and 8, of knowingly receiving property acquired by dacoity, and prisoner No. 7, of privity to dacoity.

Committing Officer.—Moulvee Fyzullah Law Officer, exercising powers of a magistrate, Zillah Beerbohm.

Tried before Mr. R. B. Garret, sessions judge of Beerbohm on the 9th May, 1853.

Remarks by the sessions judge.—The prosecutor's house was attacked by dacoits on the night of the 5th Maugh or 17th January last, and plundered of property to the value of Rupees 1,221-2-15.

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Case of
RAMMUN HAREE CHOWKEEDAR and others.

A prisoner convicted by the sessions judge as an accessory to dacoity after the fact, acquitted by the Nizamut Adawlut on the ground that as accessoryship after the fact, constitutes a crime of a distinct character, the prisoner could not be convicted of that crime on a charge of dacoity.

1853.

July 14.

Case of
RAMMUN HAREE CHOWKEEDAR and
 others.

A few days after the occurrence, the prisoner No. 5, was heard quarrelling with other persons about the division of certain property, which led to his being suspected and taken into custody. He confessed both before the darogah and before the magistrate to the effect that one Nuddia Chund Harree deposited in his house four articles, which he afterwards removed to the house of the prisoner No. 8, where they were found concealed. The prisoner No. 8, corroborated the statement, and in her house were also discovered a number of other articles which she claimed as her own, but which are also identified in a satisfactory manner as belonging to the prosecutor. The prisoner No. 6, denied throughout. The prisoner No. 7, confessed both in the Mofussil and before the magistrate, that prisoner No. 6, applied to him for the loan of a shield as he was about to commit a dacoity in the village of Dhurka, and added, that he apprized one Juggernath Sow a relative of his, residing at Dhurka, that a dacoity was likely to occur there.

All the prisoners plead not guilty in this court; prisoner No. 5, states that he was in his own village on the night of the 5th Maugh; that he was beaten and made to confess in the Mofussil; and that he was *behosh* when he repeated the same statement before the magistrate; prisoner No. 6, attributes his being implicated to the enmity which exists between him and prisoner No. 7, he claims the different articles that were found in his house as his own; prisoner No. 7, says he was at home on the night of the 5th Maugh and is a respectable man, he acknowledges to having made his confession before the darogah after being beaten and before the magistrate through fear of a burkundauze; prisoner No. 8, claims all the different articles of property found in her house as her own, except the large *lota* marked No. 21, and the silver neck-ring No. 25; she states that the darogah, *mohurir* and *jemadar* as well as the prosecutor beat her and made her confess before the former and before the magistrate.

I consider the evidence for the defence brought to prove the ill-usage of the prisoners by the police to be unworthy of credit, it is contradictory and improbable, and that to the identification of the property as belonging to the prisoners Nos. 6 and 8 is altogether insufficient, and I have no hesitation in rejecting it.

I convict the prisoner No. 5, Rammun Haree Chowkeedar of being an accessory after the fact, and sentence him to ten years' imprisonment: the prisoner, No. 6, Sristedhur Mundle and No. 8, Monee Brahmunee of knowingly receiving property acquired by dacoity, and sentence them each to seven years' imprisonment; and prisoner No. 7, Juggernath Sow of privity

CASES IN THE NIZAMUT ADAWLUT. 27

to dacoity and sentence him to five years' imprisonment, the male prisoners with labor in irons, and the female prisoner with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). As has been observed by the judge in charge of the English Department (Mr. Colvin), in his remarks* on this case in the monthly statement, the prisoner No. 5, Rumun Haree Chowkeedar was not charged with being an accessory after the fact. That crime is one of a distinct and specific character, and as the prisoner was only charged with dacoity, he must be acquitted. It will be at the discretion of the magistrate to commit him again, on a charge of accessoryship.

In the case of the prisoners, Nos. 6 and 8, Sristedhur Mundle and Monjee Brahmunee, the conviction is good and the sentence is confirmed. I do not think that the confessions of prisoner, No. 7, Juggernath Sow, constitute sufficient evidence to convict him of privity to dacoity. They are to the effect that Sristedhur twice applied to him for the use of his shield, and that on both occasions he had refused him. He adds that as Sristedhur said he wanted the shield for the purpose of committing a dacoity in a Byragee's house at Dharka, he had informed the two Chowkeedars of his village of this and told them not to allow the man to come to the village again, and he also put the people of Dharka on their guard through a relative of his own.

The dacoity occurred upwards of five months afterwards. His confessions are the only evidence against him, and these shew distinctly that he gave Sristedhur no encouragement, and lost no time in apprising the village police of his intentions. I acquit him and direct his immediate discharge.

* From the register of the Nizamut Adawlut to the sessions judge of Beerbboom, No. 744, dated 27th June, 1853.

The court, having had before them the statements connected with the sessions of jail delivery held by you in the month of May last, and referring to the case of Rammun Haree Chowkeedar and others. Nos. 5 to 8 of statement, No. 6, observe that the prisoners, Nos. 5 and 7 have been convicted of crimes with which they were not charged. There is no count of accessoryship before or after the fact, and No. 7 was not charged with privity but with dacoity and accompliceship, which latter it is to be observed, was a superfluous count, as accompliceship is comprehended in the principal charge. You should have returned the calendar, under the Circular Order No. 70, of the 14th November, 1851, for amendment in respect to the statement of charges against these prisoners.

The offence of the prisoner No. 7, who lent his shield to a party for the purpose of being used in the perpetration of the dacoity, was accessoryship before the fact and not mere privity. See the definition of privity in paragraph 2 of the Circular Order No. 8, of June 7th, 1847.

1853.

July 14.

Case of
RAMMUN HAREE CHOWKEEDAR and others.

PRESENT:
SIR ROBERT BARLOW, BART., Judge.

GOVERNMENT

versus

TRIAL No. 1.—SHEIK EMOO (No. 1.) SHEIK CHEE-
NEE MAHOMED (No. 2.) NOAB KHAN (No. 10.)
TRIAL No. 2.—BABOO KHAN (No. 9.) TRIAL No. 5.
—LUKHINARAIN SIRDAR.

Rajshahye.

1853.

July 14.
Case of
SHEIK EMOO
and others.

Conviction
and sentence
of five prison-
ers on a charge
of aiding and
abetting in a
riotous attack
on, and plun-
der of, certain
houses in re-
sistance to the
police, con-
firmed in ap-
peal.

CRIME CHARGED.—Aiding and abetting in a riotous attack on, and plunder of the houses of Mohima Chunder Dutt, Sumboo Nath Nundee and others, residing in Ryepore and Komurbog, in which property valued at 1600 Rs. was carried in the presence of, and while resisting the authority of the police.

CRIME ESTABLISHED.—Aiding and abetting in a riotous attack on and plunder of the houses of ryots of Ryepore and Komurbog in the presence of, and while resisting the police.

Committing Officer.—Mr. F. Beaufort, officiating joint-magistrate of Purnah, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 11th January and 21st April, 1853.

Remarks by the sessions judge—TRIAL No. 1.—This case has been twice before the court. Full particulars were given in statement, No. 6, for April, 1852, and which again will be found printed at page 184 *et infra* of the Nizamut reports for August last. All therefore I need add is, that the evidence fully established the complicity of the three prisoners in the outrage complained of. When called upon for their defence, they merely denied being concerned, but declined examining the witnesses summoned, and in attendance to their defence. I have therefore, concurring in the *futwa*, sentenced them as stated in the preceding column. All three are professed *lattials*.

A fourth prisoner, after informing the joint-magistrate that he did not wish any witnesses to be summoned to his defence, at the sessions, when the case came on, insisted on having them summoned. As the case has once come back for the witnesses to the defence of another prisoner being taken, I have thought it best to postpone the trial as regards this prisoner for the next sessions, and have directed his witnesses to be summoned.

TRIAL No. 2.—Baboo Khan with three others were araigned on the charge set forth in column five of the calendar

in the month of January last. (*vide* above remarks.) Accordingly the witnesses having attended, deposed that the prisoner in Maugh, 1258, B. S. was employed at the Bijlee factory, five or six coss from Hazlebut. This *alibi*, the law officer rejects, and so do I. I also consider it a bad defence by a party evading, and as the evidence for the prosecution fully establishes the complicity of the prisoner in the outrage, I have, concurring in the *futwa*, sentenced him as stated in the preceding column. I think there can be no doubt he was also a professed *lattial*.

TRIAL No. 5.—This is the third time this case has come before this court. Full particulars were given of the case in the statement No. 6 for April, 1852, and which again will be found printed at page 184 *et infra* of the Nizamut reports for August last. In the present trial six witnesses (five of whom were examined before in the sessions court) deposed to seeing the prisoner among rioters, armed ; and that he is not *Mundul*, or employed as a *Mundul*. The prisoner's defence is that his name is Lukhinarain *Mundul*, and that he is not a *Sirdar* (the common affix to persons, who are employed as *lattials*) and he brought forward eight witnesses to establish this defence, and which they did establish. Nevertheless, I concur with the law officer that there can be no doubt he was an accomplice in the affray. If not a *Sirdar*, his appearance is very much against him, and from height and stature I consider, that if once seen, he never could be mistaken.

Sentence passed by the lower court. Three (3) years' imprisonment each and a fine of 100 rupees, in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—Several prisoners were convicted in August last, on the charge preferred against the prisoners now before the court. The evidence taken in the first instance by the magistrate, and again before the present prisoners on their apprehension, as well as the evidence before the sessions judge, proves the presence and participation of the prisoners in the riot alluded to. They have all pleaded *alibi*, except the prisoner, No. 6, Lukhinarain, who denies that he is a *sirdar* and calls himself a *mundul*. The evidence for the defence is repudiated by the prisoners in the sessions court. Whether Lukhinarain, No. 6, be a *mundul* or a *sirdar*, it is sufficiently clear that he was one of the rioters. His identity is fully established as is his connexion with the Hazlebut indigo-factory, whose people were, on the occasion, the attacking party. I see no reason to interfere with the sessions judge's order.

1853.

July 14.

Case of
SHRIK EMOO
and others.

PRESENT:
J. DUNBAR, Esq., *Judge*.

GOVERNMENT

versus.

Backergunge.

1853.

CRIME CHARGED.—Culpable homicide of Kaloo on the 26th February, 1853.

July 15.

Case of
RUHIMOOD-
DEEN.

CRIME ESTABLISHED.—Culpable homicide of Kaloo.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 24th May, 1853.

Remarks by the sessions judge.—The evidence proved that the prisoner, whose duty it was to overlook the other servants, had reason to find fault with the deceased. Not satisfied with verbal admonition he kicked him or trampled on him several times. The deceased with difficulty walked to his master's house which was close by, where he fell down in a state of insensibility, in which he was removed the same day to the charity hospital, where he died eight days after.

The prisoner denied that he, even so much as, laid his finger upon the deceased.

The jury find him guilty of assault, but do not consider it proved that death ensued thereby.

From the evidence of the civil surgeon, there is no doubt that the deceased was in that state of health which rendered death at some short period inevitable. While there was life there was, however, hope; and a man commits a gross offence who does that which puts another out of the pale of hope. There is no knowing how long the deceased may have lived; he might have lived and enjoyed life for several months or even years. From the moment, however, that he received the ill-treatment from the prisoner, he evinced the serious effect it had upon him, those effects never went off, he never rallied and he died in that state into which he fell immediately after the assault. It is impossible, therefore, to disconnect the death with the assault.

I convict the prisoner of culpable homicide and sentence him to one year's imprisonment with labor commutable to a fine of fifty rupees.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). The evidence for the prosecution proves that the deceased, who was a sheep-keeper, was so far well that he was engaged in cleaning gram, when the prisoner assaulted

him. On receiving the kicks he walked off towards the collector's house, which was close by; but fell down before reaching it, speechless. The fall and the insensibility were clearly the result of the violence inflicted by the prisoner upon a body already weakened by disease. There is no reason to suppose, that the prisoner imagined that the kicks could lead to so fatal a termination; but the weakly condition of the deceased, should have saved him from such an assault. The judge in charge of the English Department (Mr. Colvin) has remarked on revising the statements, that the sentence appears to be lenient for such gross violence. I concur in thinking that the prisoner has got easily off. His appeal is rejected.

1853.

July 15.

Case of
RUHIMOOD-
DEEN.

PRESENT:
 SIR R. BARLOW, BART., *Judge.*
 AND
 H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT,

versus

MOHINDURNARAIN (No. 1), NUBKISTO DEY (No. 2), RUBBIOOLIA MERDAH (No. 3), SONAMODDY (No. 4), NARAIN CHUNG (No. 5), HURRY CHUNG ALIAS RAM SOONDER CHUNG (No. 6), BERJRAM CHUNG (No. 7), AND KAMOODIN (No. 9).

Backergunge.

1853.

July 15.
Case of
MOHINDER-
NARAIN and
others.

CRIME CHARGED.—1st count. Wilful murder of Boghye Sirdar and Surroop Byeraggy. 2nd count. Affray attended with the culpable homicide of Boghye Sirdar and Surroop Byeraggy and the wounding of Narain Chung, Hurry Chung alias Ram Soonder Chung and Budderooddin.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 22nd April, 1853.

Remarks by the sessions judge.—The putnee talook called Gobind Persaud Roy was acquired by Nazer Busteall, and descended on his death in equal parts to two parties, his heirs. One of these is Rada Mouee and the other Pearee Soonduree, from the latter of whom, Hussainooddin Chowdhree had, in his servant Eshore Chunder's name, taken the farm of the half share of the putnee.

A suit for possession of this half share arose under Act 4 of 1840, and was given in favor of the former. Since then

Prisoners charged with wilful murder, and also with affray, attended with homicide and wounding, convicted only of affray with wounding, the evidence as to the death of the two men said to have been killed, not being conclusive.

1853.

July 15.
Case of
MOHINDR-
NARAIN and
others.

the parties have had frequent disputes and each has charged the other with various acts of aggression and violence.

This state of affairs suggested to the magistrate the propriety of deputing a police force to the spot to maintain the peace, but all to no purpose, for notwithstanding that the police seem to have been on the alert and to have done what they could, each party was able to buy a hired force and to fight it out in face of a police force of a *jemadar* and five *bukundauzes*.

The fight appears to have been brought on in this way :— A party on the side of Hussainoeddin represented as numbering from eight hundred to a thousand men, appeared in the village of Kullaea, where they commenced to plunder the ryots' houses. This being reported at the *cutcherry* of Rada Monee, her *naib*, Byrub Goopt, got his men together, and went to the rescue with a force of about one hundred and sixty men. The two parties met and a regular fight ensued, ending in the death of two men and the wounding of three others on the part of Rada Monee. The parties then separated ; but Hussainoeddin's men carried off the slain, and after conveying them to the big river and dismembering the limbs, they were thrown piecemeal into the water, when the detachment, deputed on this special business, returned to Ramna Bamna, the head-quarter of Hussainoeddin Chowdhree.

Such was the very first version of the affair, and such has essentially been proved by the testimony of the police, and of the villagers, nor has it been attempted to be disproved by either party. Indeed, I have never before tried such a case except where great endeavors were made to prove that the affair did not happen in the manner deposed to by the eye-witnesses, and generally in such cases there is a plot on one side, and a counter-plot on the other, and it is matter of difficulty which side of the story to believe ; but in the present case the main facts and features are supported by a chain of consistent evidence, and no attempt is made to falsify them or even to deny them.

This relieves me of the necessity of analyzing the examination of each particular witness, and I need do no more than give a broad outline of the evidence generally.

Witnesses, 1 to 24, were eye-witnesses of the affray. By them it is proved that towards evening of the 8th January last, the noise of a tumult was heard in the direction of Ramna Bamna from which quarter, the host of Hussainoeddin Chowdhree, armed with almost every offensive weapon, came pouring into the village of Kullaca and having plundered the house of Ram Gatty, witness No. 45, they were engaged in the like occupation in the house of the prisoner, No. 8,

(released) when a very unequal force on the part of Rada Monce came to the assistance of the villagers, headed by her *naib*. The parties met in a cut rice-field, and though one side was considerably weaker in number than the other, the fight was maintained for about twenty minutes, Rada Monce's side then gave way, and Hussainooddin's men carried off the field the bodies of Boghye Sirdar and Surroop Byeraggy, two *lattials* on the side of his opponent, and the former a well known *lattial* and a *furrurree* in the case of an affray with murder which happened some years ago in Furreedpore. Having carried them to the river, witnesses, 38 to 45, were eye-witnesses to the two bodies being put into a boat, belonging to witnesses, 38, 39 and 40, on which they were conveyed to the big river and, having been cut into pieces by the Chowdhree's men, were thrown into the water, from which of course no part of them was ever seen again.

Witnesses, 8 and 9, themselves police *lurkundauzes*, were present at the spot and describe the fight in the above manner. They, as well as almost every one else, described the route taken by the Chowdhree's side, as having been marked with quantities of blood for a distance of three *cances* towards the place, where the bodies of Boghye and Surroop are said to have been embarked. The prisoner, Narain Chung, No. 5, was picked up by them wounded near the scene of contention and the jemadar, who arrived a few minutes after the fight was over, apprehended Budderooddin (released) also in a wounded state. The *jemadar*, also as far as he saw and heard, corroborates the above account.

The defence of the prisoner, No. 5, captured on the spot, was taken then and there. He states that he was engaged with about thirty others, by Boghye Sirdar, on 13 Rs. a month salary, to fight for some party living down the stream. That he, Nobin, Komul, Neelmonce, Surroop Chung, Surroop Byeraggy and Hurry Chung and others, altogether thirty persons, accordingly came by boat and after four days' travelling arrived at Bookoborea *cutcherry*, Byrub Goopt said that they were to guard it. That they were employed in so doing, having been provided with clubs, javelins and shields. That this morning early there was a noise of a number of men congregated together towards Banna, and Byrub Goopt said it was Hussainooddin's men coming to plunder the *cutcherry*, and warned us to be prepared to resist. That at about 12 o'clock the same uproar was heard in the same direction and some time later a *ryut* came running to the *cutcherry*, reporting that Hossainooddin's men had arrived at Jainugger and were plundering the *ryuts'* houses. On this Byrub Goopt sounded the *dunka* and his men collected. Some he left to

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guard the cutcherry, but himself with the prisoner, Boghye Nobin, Komul, Netae, Hurree, five or six mussulman *lattials* and one hundred villagers went towards Jaenuggur. Having arrived, by the command of Byrub Goopt to attack the Chowdhrees party in a cut field of paddy opposite Budderooddin's house, the opposite side came bounding on and wounded the prisoner who fell, they carried off Hurree Chung and Boghye and the prisoner then became too weak from his wound to discern what took place further.

This prisoner also made a similar confession to the magistrate, and both the mofussil and foudzaree confessions have been verified on oath by the subscribing witnesses.

Witness 46, the wife of Boghye, deceased, and witness 47, the mother of ditto, depose that they were informed by witness, No. 7, who was brother to the deceased, and witnessed the fight, that Boghye met his death in that affair.

Witness 48, the brother of Surroop and a neighbour of the above two female witnesses, says that Surroop went with prisoner, 5, Narain Chung, to Rada Monee's *utcherry*, where they had been engaged as servants, and that about the middle of January he heard from witness, No. 7, of Surroop's death in the fight.

Such is the general outline of the case for the prosecution. In regard to it, I may observe that the evidence of the villagers was obtained, not without much delay and difficulty. On the part of Hussainoddin Chowdhree, the burkundauzes recognized no one, so that it was not for some days that any names on his side transpired. Even those who fought on the side of Rada Monee were but partially divulged by Narain Chung, owing to his being a stranger to those parts and having been only engaged in service a few days. Budderooddin was a *ryut* of Rada Monce, and not likely therefore to say much against her. But this delay in procuring evidence, I regard as any thing but unfavorable towards its credibility. Men in this country, as lately observed by Mr. Mills, would not volunteer their evidence, and in the present case there was a good reason why all who knew any thing of the affair should keep out of the way as long as possible, for whatever side a witness might espouse, he was certain to be made a defendant by the opposite side. Besides from the nature of the case and from the inference arising that all at or near the spot were either parties concerned in the fight or allies of one side or the other, it required time for the police before they could discover where to look for evidence, and they did right, to my mind, in not hurriedly laying hands on any one either as a witness or as a defendant. The evidence which the police were at length able to obtain has been so unexceptionable, that neither the motive

nor the veracity of a single witness has been impugned by either side, and for my own part, I think the evidence, from beginning to end, may be relied upon as descriptive of the facts in the manner they really took place.

The only important contradiction in the evidence occurs between the deposition of Ram Gutty Chung, No. 45, and those of 38, 39 and 40. The latter all say that two dead bodies, wrapt in *hoogla* mats, were brought from the shore, in *another* boat, and transferred to theirs. Whereas Ram Gutty from whose information the police learnt on whose boat the bodies had been carried off, states that the bodies were not covered with any thing, and were in that state put from shore at once into the boat of witness, No. 38. This is a grave discrepancy, but I believe the old man, Ram Gutty, has attempted to be minute where neither his own feeble powers of vision, nor the shades of evening, nor the circumstances in which he was placed admitted of his observing more than the main fact, that two dead bodies were put in some manner into the boat of witness 38, and in it carried off. His attempt to describe the manner in which this was done, I regard as mere surplusage, not affecting the truth of the main fact deposed to, viz., the removal of the bodies in the boat of witness, 38.

Nor do I think that the death of the very persons, Boghye and Surroop, by the hands of Hussainooddin's men, can for a moment be doubted. They are proved to have gone out to fight, both by the witnesses in the case, and by those who were engaged on the same side. Almost all the spectators saw two men carried off the field as if they were dead, and by some, Boghye was even recognized. The blood that marked the track, by which the victors retired, indicated by its quantity, that life must soon have become extinct from the effusion of so much blood, and two dead bodies were actually carried off to the big river and there thrown in; Boghye and Surroop have been missing since then, and the fight was no sooner over and long before any false story could have been invented, than the death of these very persons was noised abroad, not as a rumour, but as an undoubted fact, and there is, I think, as little room for doubt upon this point, as there is to doubt the occurrence of the fight itself.

It remains now to take a view of the evidence against each prisoner, the nature of his defence and the evidence on his part.

Prisoner No. 1, Mohindernarain, was named at the thannah by seventeen witnesses, by eighteen before the magistrate and by seventeen before the sessions.

Prisoner, No. 2, Nubbokishto, was named at the thannah by fourteen witnesses, by eighteen before the magistrate and by seventeen before the sessions.

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Prisoner, No. 3, Rubbeeoollah, was named at the thannah by nineteen witnesses, twenty-two before the magistrate and by twenty-two before the sessions.

The above three were on the side of Hussainoddin Chowdhree.

Prisoner, No. 4, Sonamoddy, was named at the thannah by nineteen witnesses, by twenty-one before the magistrate and by nineteen before the sessions.

Prisoner, No. 5, Narain Chung, was picked up in the field wounded, and confessed, and is named at the thannah by two witnesses, by three before the magistrate and by five before the sessions.

Prisoner No. 6, Hurree Chung, was brought in five days after the fight by a chowkeedar, who seeing him wounded suspected where he had come from and on his being taken to the darogah he also confessed. He was named at the thannah by three witnesses, by five before the magistrate and by eight before the sessions.

Prisoner, No. 7, Berjram Chung, was named at the thannah by ten witnesses, by eleven before the magistrate and by nine before the sessions.

Prisoner No. 9, Kamooddin, was named at the thannah by three witnesses, by three before the magistrate and by three before the sessions.

The defence of prisoner, 1. Mohinder, is that he was in Burrisaul on the date of the occurrence and he named witnesses to prove it. These depose that they saw the prisoner on the day in question in the house of one Barut, the prisoner's brother and a *mooktar* by profession.

The defence of prisoner, No. 2, Nubbo, consists also in an *alibi* supported by three witnesses, who affirm that on the day of the fight, they met him in Hurroopoor *haut*.

Prisoner, Rubbeoollah pleads that he was in Burrisaul, having brought in witnesses to be examined by the assistant-magistrate, before whom he had a complaint pending. His three witnesses say that they recollect meeting the prisoner on the day in question in Burrisaul, but with respect to his defence, I sent for the case alluded to from the *fouzdaree*, there was no indication to be found in it that the prisoner was present, while his witness was under examination but, on the contrary from the return of the *nazir's buxee*, it is to be presumed that the prisoner did not come into the station with his witness, who was brought to the *nazir's buxee* by a *mooktar*, and the *buxee* himself deposes that he did not see the prisoner in or near the court on that occasion.

Prisoner, Sonamoddin, named Mr. Brown as his witness, and said that he was on the day of the fight in Geelabaree, but Mr. Brown was not able to depose to any such thing.

Prisoner, No. 5, Narain Chung, says he was engaged a few days before the fight as *Haldar* of Radha Monee's cutcherry ; that one day it was reported that Hussainoodeen Chowdhree's men were coming to plunder the *cutcherry* when Byerub Chunder *naib* sent him against his remonstrance to stop the plunder, telling him there was no fear if he joined himself to the police, who were on the spot ; that he did so accordingly and got wounded for his pains. He says he was not aware what he said before the *darogah* and the magistrate, as he was not thoroughly sensible at the time.

Prisoner No. 6, Hurree Chung, says that he came to Kulhea to cut paddy and put up with a *ryut* there, whose name he does not know ; that on the day of the occurrence he was running away when he heard of the arrival of the Chowdhree's *lattials*, but that he unfortunately fell among them and got wounded.

Prisoner No. 7, Berjram Chung, says he was at Bokoubureea *haut*, which is in sight of the place where the fight occurred, while the affray was going on. His three witnesses depose to this effect.

Prisoner No. 9, Kamooddin, says he was in Gcelabad at the time the fight was going on and his two witnesses say, they saw him standing there on the river bank on the day in question, while they passed in their boats.

With the exception of prisoners, 5 and 6, all the others rest their defence upon pleas of *alibi*, the particular plea of each, and the evidence by which it has been attempted to be established, will be seen in the above notes.

I attach no credit whatever to such evidence, adduced as it is in direct opposition to the testimony of so many individuals, having no object in charging innocent people with such a crime, and not being likely to make a mistake in their recognition of the parties sworn to.

The jury found all the prisoners guilty of affray attended with culpable homicide, and no doubt, they all are so, but considering that each party assembled its forces before-hand, prepared and determined upon proceeding to any length in prosecution of its quarrel that each party went on the day of the conflict, ready armed with formidable weapons for a fight, and that the fight thus took place with the utmost premeditation, I cannot regard the parties concerned in such a case as less guilty than being accomplices in a wilful murder committed in a premeditated affray.

With regard to the comparative guilt of the two parties, Hussainoeddin's side, no doubt, provoked the crime for which the prisoners are now arraigned, and they are, therefore, most to blame ; but the previous conduct of Radha Monee in op-

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posing the possession of the eight annas of the *putnee*, which Hussainoeddin had every right to, as the farmer, was not justifiable, and as her opposition, continued even after the decree of the magistrate in Hussainoeddin's favor, this plea of mitigation may be set up for his conduct, that he took up arms, because nothing else would obtain for him the property he was entitled to. However no provocation or failure to obtain a just right, can justify a party in raising an army, either to avenge a quarrel or to prosecute a right, and inasmuch as Hussainoeddin Chowdhree's men did do this and Radha Monce's adherents and hired *lattials*, accepted the challenge and fought a desperate fight in presence of the police, ending in bloodshed and murder, I distinguished so little difference between the guilt of the parties, that I recommend the same sentence for both, which is that they be imprisoned for ten years with labor in irons in banishment.

The court will see my motive in recommending such a heavy sentence, in the fact of which the court are but too well aware, that affrays in this district have not yet been nor are they likely to be, put down by the ordinary sentences hitherto awarded for affrays. The present case is a very fit one to read a lesson to the whole district, that those who commit these crimes are no longer safe in looking for any limited measure of punishment, and that an affray with murder may even cost the parties who commit it, loss of life upon the gallows.

Remarks by the Nizamut Adawlut.—(Present Sir R. Barlow Bart. and Mr. H. T. Raikes, judges).—The prisoners are charged with wilful murder of Boghye Sirdar and Sooroop Byragee and wounding Narain Chung and Buddeeroodeen.

There is no evidence of that clear and decisive nature which would justify the court in declaring that Boghye and Sooroop are dead, and were killed in this affray. A witness, Ram Guttee, has sworn to having seen the corpse of Boghye with another corpse dragged away, but his evidence cannot be trusted. His statement was first reduced to writing, on the 18th January, i. e. ten days after the occurrence, by the police. The witness was present in the village from the period of the alleged murder, on the 8th idem, and though the police were on the spot and making the strictest search in order to get some clue to the recognition and recovery of the corpses, this witness, who had recognised one of them, and also recognised the parties, on whose boat they were carried away, whom he named subsequently, remained silent on the subject for many days. The three boatmen neither recognised the corpses, nor those who brought them on board and cut them to pieces previous to their being thrown into the great river.

Dusrut Chung, nephew of Boghye, has sworn that he and Sooroop were wounded with a spear, and fell, he saw this, he thought they were killed. Boghye was wounded with a spear in the side and on the head. Sooroop had a wound on the head from a club, he saw this, from a distance of ten or fifteen beegahls.

Such is the evidence to the fact of loss of life. Other witnesses speak to the same point, but in a very inconclusive manner.

It would not be safe, on the strength of depositions on which so little reliance can be placed, to conclude that death has actually ensued on the alleged assault upon Boghye and Sooroop.

We have therefore to look at the case in another light as one of affray, attended with wounding, and in this view, we have no doubt of the guilt of the prisoners, all of whom, have been recognised by several witnesses as having been present, aiding and abetting, in the affray. They have pleaded *alibi*, but fail altogether in support of their defence. We accordingly sentence them each to five years with irons and labor.

The large body of men, collected on either side evinces such premeditation as excludes them from any mitigated sentence, and we consider them equally culpable.

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PRESENT:
SIR ROBERT BARLOW, BART., *Judge*.
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H. T. RAIKES, Esq., *Officiating Judge*.

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GOVERNMENT AND GOROBINEE CHASSIN,
versus
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CRIME CHARGED.—Rape committed on the person of Gorobinee Chassin, prosecutrix.

Committing Officer.—Mr. W. H. Brodhurst, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 30th June, 1853.

Remarks by the sessions judge.—The prosecutrix is married, and has lived with her husband for about a year, she asserts she is twelve or thirteen years of age, from her appearance, I should say she was at least fourteen and probably nearer fifteen years old. She proceeds to state that very early

Prisoner charged with rape on a married woman acquitted, the prosecutrix's statement being at variance with the evidence of the witnesses, and the charge having been brought with much delay.

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on the morning of the 12th Chyte last, she went out to gather flowers of the *mowah* trees, at a distance of about one *russee* from the village; that whilst so engaged, the prisoner came up, threw her down and violated her person; that her cries attracted to the spot, the witnesses, Nos. 1, 2, 3 and 4, on observing whom, the prisoner left her and ran away; that she then returned home in tears, and informed her father and mother of what had happened, and after three days, during which time she was indisposed, she repaired to the sudder station to obtain redress, when after consulting with her *mooktar*, Sheeboo Mojumdar, she had a petition prepared, but having brought no money for her necessary expenses, she was obliged to return home to procure some, and that after six days, she came back and presented her petition to the magistrate, on the 21st Chyte, corresponding with the 2nd April, 1853.

The four witnesses, Nos. 1, 2, 3 and 4, depose that at early dawn on the morning in question, whilst it was yet dark, they were in their *salghur*, (the place where the juice of the sugar-cane is expressed) when they heard screams, supposing that some body had been seized by a wild animal probably a bear, they armed themselves with *latees* and hurried to the spot from whence the cries proceeded, and there saw the prisoner in the act of violating the person of the prosecutrix; that immediately he caught sight of them, he rose and ran away, when they returned to their occupation and the prosecutrix to her home. They witnessed the act of violence from a distance of only a few cubits, and if their evidence is credited, there can be no doubt, that the prisoner forcibly accomplished his purpose.

In corroboration of the prosecutrix's statement and the evidence of the foregoing witnesses, the husband of the girl was named as a witness in the calendar, but he having died previous to the trial, I sent for the girl's father and the *mooktar* whom she consulted on first coming to the sudder station.

The former deposed that the prosecutrix, on her return home early on the morning of the 12th Chyte, informed him that she had been forcibly dishonoured by the prisoner and that after advising with some of his neighbours, he came into the sudder station with her to prefer a complaint. In his cross examination, he stated that between the date of the occurrence and the date on which they came to Soory, and presented the petition, neither he nor his daughter had left their village, but on being told that the prosecutrix had stated that she had during that period accompanied him twice to Soory; he corrected himself and confirmed what his daughter

had said, ascribing the mistake to defective memory, and he did this in such a manner that left no doubt in my mind, but that the facts really were, as stated by the prosecutrix.

The latter, Sheboo Persad *mooktar*, deposed that one day in Chyte last, the prosecutrix, accompanied by her father and mother and husband, came and consulted him regarding a complaint that she wished to make to the magistrate against Bykunt Gope, the prisoner, for having committed a rape upon her person; that after preparing the rough draft of a petition on plain paper, the parties not having with them the means wherewith to defray their necessary expenses, returned to their home, and came back again in a day or two, when the petition was written out on stamp paper, on the 20th Chyte, and presented to the magistrate on the following day. He states that the prosecutrix informed him that the occurrence had taken place on the 12th Chyte, and that as far as his recollection goes, it was some five or six days after, that she paid him her first visit; and that it was only a day or two after her return home, that she came back.

There is a slight discrepancy between this and the statement made by the prosecutrix, she says that she came to Soory on the third day, and was afterwards absent for about six days, but as the main fact of her having come in to complain, of her having consulted the witness and disclosed to him the indignity to which she had been subjected, and of her having returned home for a few days for the purpose she herself avows, is clearly and satisfactorily established, I consider the discrepancy above noticed of no moment, more especially, as the witness at the time he gave his evidence, was laboring under distress of mind, occasioned by the very recent death of his daughter.

The prisoner pleads *not guilty*, and in his defence states, that he knows nothing of the act of violence with which he is charged; that the plantation of *mowah* trees belongs to him, and, although situated in the zemindar's land, is in his possession, and that in consequence of his refusing to allow the villagers to gather the flowers, all those of *chassa* caste are at enmity with him, and have instigated the prosecutrix to bring this charge, to prove which, they have called persons of their own caste, and no one else; that witnesses Nos. 2, 3 and 4, are the nephews of the husband of the prosecutrix, who, had they witnessed what they have deposed to, would have murdered him on the spot.

Of the witnesses for the defence, Nos. 9, 10, 11 and 14, state, that on the morning of the 11th or 12th of Chyte, they went out to gather *mowah* flowers, but were driven away by the prisoner. Two of them allego that the prosecutrix was

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one of the party, the other two say the contrary ; none of them were witnesses to any such violence as the prosecutrix has complained of. They are in the habit of going daily to gather *mowah* flowers during the season, and on being questioned, why they particularized the 11th or 12th of Chytc, they were unable to give any thing like a satisfactory answer ; witness, No. 12, deposes to the same effect, he says that he was passing by the *mowah* plantation on the morning of the 12th Chytc on his way to his cotton field, when he saw the prosecutrix and witnesses, Nos. 9, 10, 11 and 15, driven away from under the trees by the prisoner.

A jury, consisting of four persons, sat with me on this trial, and on its conclusion, returned the following verdict, viz. the violation by force of a girl of ten or eleven years of age is called "*Failshuncea*," but the act of having sexual intercourse by force with a woman, who has cohabited with her husband, and who has had catemenia, is called "*Bulatkar*," therefore "*Bulatkar*," is proved against the prisoner, Bykunt Gope, but not "*Failshuncea*."

In the English calendar, the prisoner is charged with rape, in the vernacular, with "*Failshuncea*." If the doctrine contained in the verdict be correct, the finding amounts to an acquittal, but I look upon the doctrine enunciated by the jury, as a refined technicality, possessing no weight, and founded on no authority whatever ; and consequently I dissent from their verdict.

The prosecutrix is consistent in the statements she made before the magistrate and before this court. Her deposition taken down by the police in the mofussil, contains the name of Jugoo. Gowalah, as having assisted the prisoner, but she had not mentioned his name previously and in her subsequent examinations ; when questioned on the subject, she distinctly denied having ever uttered his name before the police ; in every other respect her description of the outrage is consistent throughout. There was certainly some delay in filing her petition in the magistrate's court, but I think it is satisfactorily accounted for. On her first visit to the sudder station, she had evidently come unprovided with the means of purchasing stamp paper, and probably of satisfying the demand of her *mooktar*, and it was for such expenses as these, as well as for money for her own and companions' subsistence, that she and they were obliged to return, without having the opportunity of presenting the petition.

The depositions of the four eye-witnesses are consistent in every respect, and are, in my opinion, conclusive as to the guilt of the prisoner, whilst the evidence for the defence is utterly worthless, I can never believe that this young girl

would either herself persist, or would be allowed by her own or her husband's family to persist, in swearing falsely to her and their disgrace, and to her own loss of caste, merely to gratify the ill-will, that was according to the prisoner's own shewing, felt towards him by all the villagers generally. It is highly improbable that she and her friends would victimize themselves in this manner because of the enmity arising from the prisoner's refusal to allow the villagers to gather the *mowah* flowers, but whether he refused, and thereby created the ill-feeling he speaks of, or not, it is very certain that the prohibition was heeded by no one.

Under these circumstances, I would convict the prisoner of the crime charged, viz. rape on the person of the prosecutrix, and therefore, as required by Clause 3, Section 6, Regulation XVII. of 1817, I submit the record for the consideration and orders of the Court of Nizamut Adawlut, and in so doing, would recommend that a sentence of five years' imprisonment, with labor in irons, be passed upon the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. H. T. Raikes.)—We do not place the same reliance on the statement of the prosecutrix as the sessions judge attaches to it.

The spot where it is alleged this outrage was committed is described as five or six *haths* from the road, and about twenty *haths* from the village, and the same distance from the sugar-mill, where at the time, the eye-witnesses (relations of the prosecutrix's husband) were at work. It is not easy to believe that violence of this nature would be perpetrated in a situation so little removed from public observation and within so short a distance from a place, occupied by members of the girl's own family, and where it must have been so easy to ascertain if any of them were on the spot.

It seems to us much more reasonable to suppose that the prosecutrix and the prisoner were detected in the act of sexual intercourse by the relations alluded to, and that the prosecutrix, in order to shield herself from the consequences of her frailty, and to avoid the loss of caste, has colluded with her relations in bringing this charge against the prisoner.

The statement, that she came into the station to complain three days after the violence, is not borne out by the *mooktar*, to whom she and her father first applied. That witness says it was *five* or *six* days after the date of the occurrence when she first addressed him on the subject, and that she went home and returned to present the petition two or three days after that. Thus one of the most essential points, in a case of this kind, prompt and early complaint is wanting.

We also observe that the prosecutrix, in her final statement

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on oath before the magistrate, deposed that the prisoner threw her down and remained upon her for some time and did not detach himself from her, until he had completely satisfied his desires. Entering most minutely into every detail. During this time (which she calls one *dund*) she says she was suffering great pain from the prisoner's acts, and crying out for assistance, but the witnesses did not appear till all was over and the prisoner on seeing them ran off, whereas the witnesses state that they went out directly they heard the cries, and beheld the prisoner in the very act of forcing the prosecutrix, that on seeing them he released her and ran off, while the girl went to her home.

If the prosecutrix's version is true, she intended it to be understood that the prisoner was the first man who had connection with her, that she was consequently suffering much pain, and not likely to have resigned herself willingly to his wishes. But had this been the case, there would have been some signs of the fact, and had the prisoner been seen using such violence, as she describes by her own relations, it is scarcely credible that they would have left her without tendering any assistance or accompanying her home and stating to her parents or husband a full justification of her conduct.

The above circumstances therefore lead us to view the girl's own statement (which does not at all accord with the innocence she would assume) as well as those of the witnesses her near relations, with great suspicion. We moreover believe that the whole truth has not been revealed, and that the character of the prosecutrix is not beyond suspicion, for the father admits that she had been turned out of her husband's house three days before this occurrence, and no satisfactory reason is assigned for it. The prisoner's defence may not be true, but we can easily make allowances for his not choosing to plead consent on the woman's part. Such an admission might be regarded by him as proving to a certain extent the charge against himself, without his being able to disprove the rest of it.

For the above reasons, we acquit the prisoner and direct his release.

PRESENT:

J. R. COLVIN, Esq., *Judge*, and
H. T. RAIKES, Esq., *Officiating Judge*.

GOVERNMENT,
versus

HOOLAS GOALAH (No. 8), AND MOTEEL GOALAH (No. 9).

Patna.

CRIME CHARGED.—Highway robbery (with wounding) of property valued rupees 4-4.

1853.

Committing Officer.—Mr. F. A. Vincent, deputy magistrate of Barh.

July 16.

Tried before Mr. B. J. Colvin, officiating commissioner, with powers of a sessions judge, Patna, on the 20th June, 1853.

Case of
HOOLAS GOALAH
and MOTEEL GOALAH.

Remarks by the officiating commissioner, with powers of a sessions judge.—This case is referred on account of a difference of opinion with the law officer, who agrees with me in the conviction of Hoolas, but has recorded a *futwa* of acquittal of Motee, whom also I convict.

Prisoner charged with highway robbery acquitted, the evidence to his recognition being insufficient.

The prosecution, as first entered in the calendar, was said to be on the part of Nunboo Opadhia and Government; but finding that he and Sheo Sahaye, witness, No. 1, were the parties attacked and robbed, and that his evidence was as much required as that of Sheo Sahaye, I ordered that Government should be made the sole prosecutor, and he a witness.

The following is a statement of the case. The above two persons were on the evening of Saturday, the 14th May,* on their way home from a neighbouring village, when they were attacked by three foot-pads. Hoolas struck Nunboo Opadhia a violent blow on the forehead, which felled him to the ground, when he was robbed of his clothes. The robbers then rushed on Sheo Sahaye, who was behind Nunboo. He fled, but in his flight fell, and was robbed of articles of clothing also. On getting up, he shouted and attracted the attention of Doolee Chowkeedar, witness, No. 3 and others, who pursued the robbers and seized Hoolas with one piece of Nunboo's clothing, which is recognised by him and his witnesses as his. The other two escaped, and it was not known who they were, till Mohun Chowkeedar, on seeing Hoolas after seizure, named Motee as having been in his company with another Boodhun, not apprehended. Motee was seized ten days afterwards, and was immediately recognized by the two parties robbed.

* The witness, No. 1, said, it was Saturday, the 20th *Baisakh*, but Saturday, 14th May, was the 21st *Baisakh*, all agree it was on a Saturday.

1853.

There was also the evidence of witnesses, Nos. 11 and 13, viz. Sookun Passec and Duleep Sing, to prove that he had been in company with Hoolas previous to the robbery.

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Case of
HOOLAS GOA-
LAH and MO-
TEE GOALAH.

I consider the case to be quite proved against both the prisoners, while the law officer only convicts Hoolas on a *futwa* of *acoobut*, and would, as above stated, release Motee.

Hoolas having struck the severe blow upon the head of Nunboo Opadbia, from which he was some days in hospital, and the mark of which he still bears, and as he (Hoolas) was formerly, on a conviction of cattle-stealing, sentenced to two years' imprisonment under the name of Hemut, which he allows to have been an alias, I have sentenced him to ten years' imprisonment, with labor and irons in banishment. The sentence to be suspended under clause 6, Section 4, Regulation IX. 1831, pending the orders of the Nizamut Adawlut in the case of Motee.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin, and H. T. Raikes.) The case is referred to the court only as regards the prisoner, No. 9, Motee, whom the law officer would acquit.

We think that the proof against him is too uncertain, and too much open to suspicion to warrant a conviction.

It does not appear that the prisoner, No. 8, Hoolas, who has been convicted by the sessions court, and who was apprehended close to the spot immediately after the commission of the highway robbery, was at all questioned as to the names of his two accomplices, or that he named them in any of his statements.

The apprehension of the prisoner, Motee, was caused by the information given on the 20th May, by Mohun Chowkeedar of the village of Manikpore, distant about a *coss* from Mouza Sheikhpura the scene of the robbery, that he had seen the prisoner, Motee, in company with the apprehended prisoner, Hoolas, and another not yet apprehended, Boodhun Goalah, in the Sheikhpura lane on the evening of Saturday, (the 14th May last,) the date of the occurrence. But it is shown by the statements of the witnesses Sookhun Passec, No. 11, and Duleep Sing, No. 13, that Mohun was himself *an associate of these three persons* at that time, and that he bought and drank some toddy with them at Sookhun Passec's shop. Of these four companions, three probably committed the robbery, but we cannot be certain, except as to the prisoner, Hoolas, which of the four personally joined in it.

The case against the prisoner, Motee, as to participation in the perpetration of the robbery, rests wholly on the recognition of the two brahmans who were robbed. This recognition is positive, but it was made only after Motee had been seized

and brought before them, eleven days after the event. It is notorious how ready parties in this country are, under such circumstances, to recognize any one who is secured and accused upon any plausible ground, as having been concerned in the attack upon them. Recognition in the hurry and perturbation of such an attack, of persons, whom the parties had, so far as appears, never before even seen, is very little to be trusted. Indeed, two of the other witnesses Doolee Chowkeedar, No. 3, and Toolah Sing, No. 4, neighbours who came upon the alarm, and who were much less likely to be confused and flurried than the two men who had been attacked, *did not recognize* the prisoner, Motee, on the trial. They recognized him before the magistrate, but, at the trial, said only that they had seen *a short man like him.*

We, therefore, acquit the prisoner, Motee, and direct his release, upon this trial.

There are apparently good grounds for an inquiry by the magistrate as to the character and mode of livelihood of the prisoner.

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July 16.

Case of
HOOLAS GOA-
LAH and MO-
TEE GOALAH.

PRESENT:

H. T. RAIKES, Esq., Judge.

GUNGANARAIN PUNDIT, ISSUR CHUNDER PUNDIT, OOTTUM CHUNDER PUNDIT AND GOVERNMENT,

versus

KALLA CHAUND HAREE CHOWKEEDAR No. 1, (APPELLANT,) AND SHOOBUL BAGDY No. 2, (APPELLANT.)

24

Pergunnahs.

1853.

CRIME CHARGED.—1st count Nos. 1 and 2 with dacoity in the house of the prosecutors on the night of the 14th January, 1853, in which property valued at Co.'s Rs. 139-10, was plundered and 2nd count No 1, with being privy to the said dacoity both during and after the fact, being at the time a police chowkeedar.

CRIME ESTABLISHED.—1st count No. 1, with privy to dacoity during and after its occurrence, being at the time a police chowkeedar and No. 2, with dacoity.

Committing Officer.—Mr. E. Jackson, joint magistrate of Baraset.

Tried before Mr. W. J. H. Money, sessions judge of 24 Pergunnahs, on the 21st April, 1853.

July 16.
Case of
KALLA-
CHAUND HA-
REE CHOW-
KEEDAR and
others.

Conviction
and sentence
of two prison-
ers charged
with dacoity,
confirmed in
appeal.

1853.

July 16.

Case of
KALLA-
CHAUND HA-
REE CHOW-
KEDAR and
others.

Remarks by the sessions judge.—The three prosecutors lived in the same premises in different apartments, the first being absent from home on the night of the dacoity ; the two others deposed to the fact of their house being attacked about midnight, on the night of the 2nd^o Maugh last (Friday), by about twenty dacoits with *lattees* and *mussals* in their hands, who broke open their boxes and plundered property, consisting of gold and silver ornaments, brass utensils and clothes to the amount of about 139 Rs. Suspicion attached to the prisoner who was the chowkeedar of the village in consequence of his absence from his post, and his apprehension and statement led to the arrest of prisoner 2. The prisoners denied the charges on which they were arraigned in this court. In the mofussil and before the magistrate, prisoner 1, *Kallachaund Hari Chowkeedar* admitted his privity to the dacoity during and after its occurrence ; prisoner 2, *Shoobul Bagdy* also admitted his committing the dacoity. Several witnesses (neighbours) deposed to the fact of the dacoity in the house of the prosecutors on the night in question and their seeing marks of violence : The prisoners declared they had been ill-treated and forced to confess. Prisoner 1, *Kallachaund Hari Chowkeedar*, cited witnesses, but after the evidence of one witness had been taken, the prisoner did not require the others to be examined. I convicted prisoner 1, *Kallachaund Hari Chowkeedar*, on the second count, and prisoner 2, *Shoobul Bagdy*, on the first count, and in consequence of prisoner 1, being at the time, a police chowkeedar, awarded him a severer degree of punishment.

Sentence passed by the lower court. No. 1, Fourteen years' imprisonment and No. 2, ten years' with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). The prisoners urge in appeal that they were ill-treated by the police, and confessions written, of which they knew nothing, but that no property was found upon them. I observe, however, that both the prisoners gave very detailed confessions before the magistrate, and these there can be no doubt were their own, and they tally precisely with what they stated in the mofussil. I see no reason to interfere with their conviction or the sentence passed upon them by the sessions judge.

PRESENT :
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT,
versus
GOPEENATH COWRAH.

24
Pergunnahs.

CRIME CHARGED.—1st count, dacoity in the house of Ramruttun Roy and plunder of property to the amount of Rs. 480-14; 2nd count, being accomplice in the above crime.

CRIME ESTABLISHED.—Being an accomplice in dacoity.

Committing Officer.—Mr. E. A. Samuells, magistrate of the 24 Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of the 24 Pergunnahs, on the 19th April, 1853.

Remarks by the sessions judge.—The Government was prosecutor in this case which is connected with that entered in the statement of convictions for September, 1852, where the particulars are recorded as follows. “The prosecutor deposed that on a Friday night the 6th Assar last, at midnight, he and his family were disturbed by a sound of voices on the roof of his upper storied house, when the door of the stairs leading to the roof was broken in, and about eight dacoits descended to his room one of them striking him with a stick which made him insensible for a time ; his boxes, *pettarahs*, were then broken open, and property plundered consisting of gold and silver ornaments to the value of about 480 rupees. The dacoits altogether about twenty in number being armed with *lattees*, axes and swords and intimidating the prosecutor, who managed to escape with his daughter to a neighbour’s house ; it appeared that a wall surrounded the prosecutor’s house, to the west of which was a bamboo clump which enabled them to scale the wall inside the compound, and close to the house was a *bale* tree up which some of the dacoits climbed and mounted the roof, some of them as described entering the house from above, and the others from below. The prisoners denied the charges on which they were arraigned in this court ; in the mofussil they all admitted the dacoity. Prisoner 1, making a very full confession and describing the manner in which the prosecutor’s house was scaled, admitting having taken some of the plundered property to Hurro Chunder Shaha witness 28, Neelmony Dutto Poddar witness 29, and to his woman witness 30 Khettro Raur, and acknowledging that he had been three times apprehended on a charge of dacoity. Before the magistrate prisoner No. 2, Bhooobun Mohun Patro Dome and prisoner No. 4, Mud-dun Parooye admitted the dacoity, and prisoner No. 3, Kissen

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July 16.

Case of
GOPEENATH
COWRAH.

Prisoners
convicted by
the sessions
judge as an
accomplice in
dacoity acquit-
ted on appeal.

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1853.

July 16.

Case of
GOPEENATH
COWRAH.

Koormee acknowledging his being an accessory before the fact. All the others denied the charges. The prosecutor could not recognize any of the party who attacked and plundered his house, but a clue was discovered from information received from witness 27 a *goinda* called Hurry Mohun Doss who had ascertained that the dacoity had been committed by Nepal Dome and his gang, which information led to their apprehension. This witness appears to be acquainted with Nepal 1, Bhoobun Pattro Dome 2, Nuddyar Chaund Bagdy 3, and Sisteedhur Dome 8, and declares them to be all bad characters, Nepal being a sirdar dacoit. Witness 1 Khussooa alias Pear Shaik (admitted as an approver) deposed to the fact of the dacoity in the prosecutor's house as described in the mofussil confessions of all the prisoners, whom he identified as being concerned in the dacoity. Witness 3 and witness 4, Jankee Shawyuth and Gobind bearer, corroborated the prosecutor's statement as to the fact of the dacoity, and the marks of violence they observed on going to his premises, and deposed also to the bruises visible on the prosecutor's head and shoulder. Witness 28 Hurro Chunder Shaha, and witness 29 Neelmony Dutto Poddar deposed to the sale to them of the plundered property by prisoner 1, Nepal Dome. Witness 30, Khettur Raur deposed to the prisoner 1, Nepal Dome, giving her the articles No. 1 and No. 2 silver ornaments. Witness 31, Madhub Shaha, deposed to the prisoner 1, having placed some property with him. Witnesses also deposed to the discovery of property, No. 1 and No. 2 in prisoner, No. 1, Nepal's house, and others recognized the articles as belonging to the females of the prosecutor's family." The prisoner denied the charges, on which he was arraigned in this court and before the magistrate; in the Mofussil he admitted his complicity in the dacoity and his subsequent concealment, and he was recognized by witness 1 Khussooa alias Pear Shaik as the person he had named in his evidence at the previous trial. Although three witnesses cited by the prisoner certified to his good character, their evidence was not sufficient to impugn the facts elicited for the prosecution. I convicted the prisoner of being an accomplice in dacoity, and sentenced him to imprisonment accordingly.

Sentence passed by the lower court. To be imprisoned for the period of 10 (ten) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner is said to have confessed in the Mofussil, but this he denies, and he pleaded not guilty before the *foujdary* and sessions courts. No property has been traced to him, and no recognition of him has been sworn to by any one, but a single approver. On this man's evidence, and the fact of the prisoner having been out of the way since the dacoity,

he has been convicted by the sessions judge. I do not find any thing in the case confirmatory of the truth of the approver, as to this man's complicity, except that he was named by one of the confessing prisoners in the *foujdary*. Under these circumstances, I do not think the approver's evidence sufficient for his conviction and acquit the prisoner.

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Case of
GOPEENATH
COWRAH.

PRESENT :

J. R. COLVIN, Esq., Judge, and
H. T. RAIKES, Esq., Officiating Judge.

GOBIND MUNDUL AND GOVERNMENT,

versus

24
Pergunnahs.

ABEER KHAN (No. 1), SHURRIET (No. 2), GOOE KHAN (No. 3), AND GOBURDHUN MIRDHA (No. 4).

1853.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, in which property valued at Co.'s Rs. 5,000 was stolen; 2nd count, prisoners, Nos. 2, 3, and 4, with having in their possession, part of the stolen property, knowing it to have been stolen in the said burglary; 3rd count, prisoners, Nos. 1 to 4, with privity after the fact to the above crime.

Committing Officer.—Mr. A. Hope, officiating joint magistrate of Barasat.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24 Pergunnahs on the 17th June, 1853.

Remarks by the officiating additional sessions judge of 24 Pergunnahs.—The prisoners are charged with burglary and theft, with receiving and having in possession plundered property, and with being accessories after the fact, and plead not guilty. The term "privy" has been erroneously used for "accessory" in the third count of the indictment, and the prisoner Abeer Khan is excluded from the second count.

The prosecutor states that his house was burglariously entered one night in the month of Kartick last, date unknown, and property to the amount of 5,000 rupees, consisting of cash and gold and silver ornaments carried off. He appears to have known nothing of the robbery till the following morning, and supposes that the thieves possessed themselves of the keys of two iron chests and, opening them, took out of one of them a box containing valuables with which together with the keys of the iron chests and another box of jewelry, &c., they decamped.

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Case of
ABEER KHAN
and others.

Prisoners charged with burglary and having stolen property in their possession, acquitted on account of the delay on the part of the prosecutor in bringing the charge, and the contradictions in the evidence.

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After thus deposing to the occurrence, the prosecutor affirms that he informed the *darogah* of the burglary, both in person and by messenger, but on each occasion withheld the fact that he had lost property, from dread of exactions by the police. He further states that soon afterwards he brought the iron chest which contained his box of valuables to Calcutta for the purpose of having the lock picked, and then only learned the full extent of his loss; that some three weeks after this, he went to the joint magistrate of Baraset and verbally made him acquainted with all the above circumstances; that that functionary gave him an order on the *darogah* written in English, who, on receiving the document, made enquiry into the matter and on his, prosecutor's, suspicion arrested prisoner, Abeer Khan; that the prisoner confessed before the *darogah*, and on his confession his associates, the rest of the prisoners, were taken into custody.

Four witnesses for the prosecution depose, that they saw what appeared to them holes or perforations in the outer and inner walls of the prosecutor's dwelling, recently built up with masonry.

The witness, Manula Chowkidar states, that he searched the house of the prisoner, Shurriet Khan, and that in it was found a brass *thali*, or plate, which the prisoner said belonged to one Etbari Shaikh. He further affirms, that the prisoner dug up with his own hands from the floor of his cow-shed an earthen vessel containing sixty rupees, saying that it was the proceeds of the sale of his share of the property plundered from the prosecutor's house. As regards this evidence, I shall first remark that it was illegal to employ a Chowkidar in the search of a prisoner's house, and secondly, that this search and discovery took place upwards of two months after the alleged burglary and theft.

The witness, Kateb Khan deposes, also to the finding of the *thali* in the house of the prisoner, Shurriet, but says that the prisoner declared it to be the property of one Ukbur. He speaks likewise to the fact of the prisoner having dug up sixty rupees from the floor of his cow-shed, but adds that in doing so, the prisoner affirmed that he produced the money from fear of being assaulted by the *darogah*. The only observation I shall record, with reference to this testimony, is that it is contradictory as regards the prisoner's statement relative firstly, to the owner of the *thali*, and secondly to the implied proprietorship of the hidden coin, and the motives which induced him to dig it up.

The witness, Kunai Chowkidar, deposes to the above facts, corroborating the statement of his fellow-chowkidar, Manula, as respects the contradictory allegations above noticed. Here

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is another policeman employed in the matter of search and finding of stolen property.

1853.

The witness, Bachu Ghose deposes, that the prisoner, Gooe Khan, dug up thirty rupees from the floor of his house with a knife and confessed to the *darogah*, though he, deponent, admits that he did not hear all that the prisoner said.

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and others.

And the witness, Nurhuri Pal affirms, that the prisoner, Gooe Khan, dug up thirty rupees with a *spade* and did not confess to the *darogah*. He contradicts himself relatively to the latter assertion, and on being questioned admits that the prisoner did make some sort of admission to the *darogah*. Both the foregoing deponents state, that the *darogah* committed the prisoner's statement to paper.

The witness, Ramsunder Rai says, that the prisoner, Gooe confessed before the police, and that the thannah *mohurir* took down his confession.

The witness, Sifautula Kaligur, is the son-in-law of the prisoner, Goburdhun Mirdha, and says, that the prisoner first gave him 21 rupees to take care of, and subsequently a pair of silver bangles, *taveez*, a ditto anklets, *mul*, a waist chain, three small pieces of gold, and a golden ornament for the forehead, and that on the *darogah's* arrival with the prisoner in custody a few days afterwards he, deponent, gave up the articles, which he had buried under ground for the purpose of greater security, at the bidding of the prisoner, and brought the cash from the *gomashla* to whose charge he had committed it. I shall here only remark that the witness said in the joint-magistrate's court, that he had the cash about his person and then and there gave it up to the *darogah*.

The witnesses, Bhugirut Mundul and Tazim Gazi depose, that the last witness Sifautula, produced from under ground at some distance from the prisoner's house the silver and gold articles above enumerated, together with the cash, and that the prisoner himself dug up from under a bank three or four pieces or bars of melted silver. I shall here simply notice that the witness, Sifautula, says nothing of the finding of the bars of silver, or of the statement alleged to have been made by the prisoner of the sale of the gold bangle, *baoti*, to one Tarni Komar for forty rupees, which fact is distinctly averred by the witnesses Bhugirut and Tazim, and that the latter affirms in contradiction to the other two, Sifautula and Bhugirut, that the former dug up the silver articles of his own accord, and *not* at the bidding of the prisoner.

Four witnesses are brought to identify the property recovered, but their identification is any thing but satisfactory. The articles are scarcely, if at all, susceptible of recognition, and the deponents admit that there is no identifying mark by

1853. which they can be known. One of the four witnesses, brother-in-law to the prosecutor, denies all knowledge of the property and the party to whom it belongs.

July 18. The seven next witnesses speak to the mofussil confession of the prisoners, Abeer Khan, Shurriet Khan and Goburdhun Mirdha, but their testimony is so confused, and so much at variance with each other in important points, that it is impossible to credit it. For instance one witness deposes to the confession of a prisoner to the record of which he is not named as a subscribing and attesting witness, and *vice versa* some also admit that they did not hear all that fell from the prisoners' lips, and some fix the time of the taking down of the confessions to one period of the day and some another, i. e. some the fore and some the afternoon.

The only remaining proof against the prisoners to be considered is their confession before the joint-magistrate, and I cannot believe the truth of these. That of the prisoner, Abeer Khan, is incredible from outrageous improbability, and that of the other prisoners is in very little better plight in that respect. It is to be remarked that the admissions of the prisoners have reference solely to the division of the property which is said to be surrendered by them after the lapse of upwards of two months, subsequently to the alleged robbery, partly in cash as the sole proceeds of the plundered articles, partly in a fused and melted state, and partly in the shape of the articles themselves. It is extremely difficult to my mind to believe that robbers, who had stolen property and sold and melted down the greater portion would retain the proceeds for upwards of two months, or having retained them, would voluntarily give them up for the purposes of their own condemnation, which was otherwise unsusceptible of proof.

All the prisoners deny the charge and repudiate their confessions. The prisoner, Goburdhun Mirdha, claims all the articles pointed out by him as his property and states, that he melted down some of the gold and silver ornaments belonging to the females of his family from dread of an execution that might possibly ensue on an action brought against him in the moonsiff's court by the brother of the prosecutor. He further avers that the pair of armlets and anklets were deposited with him for a cash advance of four rupees.

The witnesses, cited by the prisoners, speak to their good character and respectable connection, and of those called by the prisoner, Goburdhun Mirdha, all prove that a suit has been filed by the prosecutor's brother against the prisoner in the moonsiff's court, and one of them speaks indirectly to the fact of his having advanced four rupees to a party on the deposit of silver ornaments.

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and others.**

The *futwa* of the law officer convicts the prisoners, Shurriet Khan, Gooe Khan and Goburdhun Mirdha, of burglary and theft and having in their possession plundered property, knowing it to have been stolen, and the prisoner, Abecr Khan of ABEER KHAN being privy to the same, and declares them liable to discretionary punishment by *tazeer*.

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I dissent from the finding, firstly, because the burglary and theft is not proved by the evidence; secondly, because from the perjury committed by the prosecutor in first declaring on solemn affirmation that he was not robbed, and subsequently stating also on solemn affirmation that he was, (for which I have directed his committal to the sessions), and the lengthened period that elapsed from the time of the alleged robbery to the bringing of the present charges, I am of opinion that the robbery never did occur; thirdly, because neither the finding of the property on them, or their mofussil confessions are proved against the prisoners; fourthly, because I discredit their *foujdaree* confessions, and believe that they were induced by some unfair and illegitimate means; fifthly, because the identity of the recovered property is not established, and lastly, because all the probabilities of the case militate against the belief that the prosecutor was robbed in the manner and to the extent asserted, and that the prisoners were the parties who plundered him.

Entertaining these views, I acquit the prisoners and recommend their release, particularly as the prosecutor appears to have had an object in instituting these proceedings and inducing these results, namely, the evasion of the claim set up by his brother's widow to a share of the family property which he is unjustly withholding from her.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and H. T. Raikes.) We concur with the sessions judge that, under all the circumstances of delay in the prosecution as apparent on the record, and the many contradictions of the witnesses in their different statements, which have been referred to in detail by the judge, the evidence in this case is not such as to warrant a conviction, and we therefore acquit the prisoners.

PRESENT:
H. T. RAIKES, Esq., *Officiating Judge.*

RUGHOBUR AND GOVERNMENT
versus,

Patna.

KUNHYA SINGH.

1853. CRIME CHARGED.—Wilful murder of Mussummaut Bul-kuseah.

July 18. Committing Officer.—Mr. W. Ainslie, magistrate of Patna.
Case of Tried before Mr. B. J. Colvin, officiating commissioner, with
KUNHYA powers of a sessions judge, Patna, on the 2nd July, 1853.
SINGH.

Remarks by the officiating commissioner.—The prisoner, on the morning of the 11th June, 1853, went to the house of Rughobur, a carpenter, to call him to cut bamboos. Not finding him at home, he got angry and began to abuse his wife, attended with saying her husband was always putting off coming to cut his bamboos. The woman recriminated, when he assaulted her, of aggravation, seizing her by the hair of the head, knocking her on the ground, and beating and kicking her. The witnesses, Nos. 1, 2 and 3, depose to this. The woman then went to the *thannah* about half a *coss* off to complain, but the *darogah* referred her to the magistrate. Shortly after her return, she became senseless and died the following day. The *darogah* reported* her death to have been the result of eating opium out of spite and from shame of having been beaten. The corpse was sent in and examined by the civil surgeon on the 13th Idem, who has deposed to death having been caused by excessive maltreatment in the mode described, and to there being no trace of opium.

The prisoner denies his guilt and ascribes the deceased's death to opium, and states that the case has been got up against him from enmity.

His witnesses say they *heard* of the deceased having died from opium, but do not know of any quarrel between the prisoner and the prosecutor, or his witnesses.

The law officer convicts of culpable homicide, but not of murder as charged, from the absence of any weapon in the prisoner's hand, when assaulting deceased.

I convict the prisoner of aggravated culpable homicide, and would sentence him to fourteen years' imprisonment, with labour in irons, in banishment. Such a sentence being beyond my competence to pass, I refer the case for the orders of the Nizamut Adawlut.

* The *darogah* has since been dismissed for his conduct in this case.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) I concur with the sessions judge in convicting the prisoner of culpable homicide attended with circumstances of aggravation, and, as proposed by him, sentence the prisoner to imprisonment with labour, for the space of fourteen years in banishment.

1853.

July 18.

Case of
KUNHYA
SINGH.

PRESENT:

SIR R. BARLOW, *Bart.*

J. DUNBAR, AND J. R. COLVIN, Esqs., *Judges.*
H. T. RAIKES, Esq., *Officiating Judge.*

SHAIK MONEE ON THE PART OF GOVERNMENT,

versus

MATHUR BEWA.

ASSAM.

1853.

CRIME CHARGED.—Wilful murder of Shaik Ameen.

Committing Officer.—Lieut. W. Agnew, magistrate of Gowalparali.

Tried before Major H. Vetch, deputy commissioner of Assam, on the 31st May, 1853.

Remarks by the Deputy Commissioner.—The case is as follows. The prisoner, stated to be a mere child of ten or eleven years, was married in the month of Maugh last to the deceased, who was a strong healthy man, about thirty years old, while the prosecutor is the deceased's elder brother, they all lived in the same house, and one night he (prosecutor) was awake by his brother's cries of murder. On going to the spot, he found him in a sitting posture, with two severe wounds on the head from which the brain protruded, his little finger had also been severed from his right hand. The deceased with difficulty informed him that the person who had inflicted the wounds had gone out by the back of the house, and died the following day from the effects of these wounds.

The prosecutor suspected the prisoner from her running away when the police were expected to arrive.

The weapon produced is a *dhow*, one cubit and eleven fingers in length including the handle, with a blade two and a half fingers wide and weighing (11) eleven *chittacks*.

The prisoner before the magistrate and jury pleaded guilty to the charge, alleging at the same time that she did not know what she was about.

Five witnesses, neighbours, depose to having early one morning heard cries from the prosecutor's house, and on going

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Case of

MATHUR BEWA.

1853.

to see the cause, found the deceased in the state as already described by the prosecutor ; that the deceased was with great difficulty able to tell them that his wife, the prisoner, was the person who had wounded him, and that day he died from the wounds.

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Case of

MATHUR BE-

W.A.

Three witnesses saw the body, and state that the deceased was previously a strong healthy man.

Two witnesses depose to the capture of the prisoner, who had thrown herself into the river to escape them.

Four out of the first five witnesses depose to the confession made by the prisoner before the police, and three witnesses depose to the confession made before the *foujdaree* court.

The confession is to the effect, that the night preceding that of the murder, her husband told her to get ready some tobacco, but being sleepy, she did not obey and her husband struck her two blows on the back with a bamboo, also that he pressed her down with his hands, but at the time she felt no ill will ; next day her husband the deceased sharpened his *dhow* to cut null, but instead of cutting it, he went to fish, leaving the *dhow* behind. The same day after his return home he retired to sleep in one place while she, her brother, and prosecutor's wife slept in another ; during the night she awoke and the thought that she would punish her husband with the *dhow* took possession of her, she got up, took the *dhow* and went to his chamber, where she found him asleep, and taking the *dhow* with both her hands struck him two blows with it on the head and fled, after this her neighbours came and removed him into another house when she returned to her own. Prosecutor went and gave notice at the *thannah* and on her hearing the police were coming she got alarmed and ran off, but was captured ; she cannot say what was her object in wounding her husband, and was not in her senses when she did so, and did not think she would kill him.

The jury found the prisoner guilty of wilful murder, and the magistrate concurred in the verdict and remarks, the prisoner's crime is one that merits a capital sentence, but her tender age forbids in his opinion the infliction of that punishment, and he recommends that a sentence of imprisonment for life with labour suited to her sex in the *zillah jail* be passed on her.

The deposition of the prosecutor, as recorded, gives a wrong date to the transaction, he also deposes to the deceased having only indicated the direction by which the person who inflicted the wounds retired, while the neighbours who arrived shortly after depose to the deceased having told them that it was his wife (i. e. prisoner) who wounded him ; yet I do not think these discrepancies throw any doubt in respect to the perpetrator, and as the confession of the prisoner and attendant

circumstances satisfies my mind that she committed the murder, and which, had it been committed by one of riper years, must of necessity have called for a capital sentence, but perpetrated as it has been by a child, although wife, I concur with the magistrate's proposal, and in submitting the case to the Court of Nizamut Adawlut, beg to recommend that she, the prisoner, Mathur Bewa be imprisoned for life, with labour suited to her sex in the *zillah jail*.

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Case of
MATHUR BEWA.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) I request the opinion of the court at large upon this case. It is a peculiar one, as respects the age of the prisoner. She is described as being a mere child of ten or eleven years of age. How is this fact to be taken as affecting her confession, and the measure of punishment due to her crime?

According to the English law “between the age of seven and fourteen years, an infant shall be deemed *prima facie*, to be *doli incapax*, but *malitia supplet etatem*, and this presumption may be rebutted by strong and pregnant evidence of a mischievous discretion, for the capacity to do evil, and contract guilt is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment.” Accordingly, it appears that infants under ten years of age have been adjudged to suffer death; but it has been laid down that “in cases of this nature, the evidence of a mischievous discretion to rebut the *prima facie* presumption of law arising from nonage, should be clear and strong beyond all doubt and contradiction.” The evidence against the prisoner in this case is her own confession. I see no reason why it should not be received as good and sufficient evidence, and receiving it as such, it may be held to be established, that at the time she committed the murder, she had a guilty knowledge that she was doing wrong, although her statement that she only intended to punish her husband, and did not intend to kill him, is entitled to consideration. Under all the circumstances of the case, I am disposed to think, that imprisonment for ten years, with labour, suited to her sex, would be a sufficient punishment.

In volume one of the Nizamut Reports, pages 152 and 213, two cases are given, in which boys of nine years of age were convicted of murder. In the one the prisoner was sentenced to imprisonment for life, in the other, he was discharged without punishment, in consideration of his extreme youth. And at page 148, of the same volume, there is a case, in which a boy of twelve years of age, convicted of murder, was sentenced, on the same ground, to the mitigated punishment of thirty lashes and imprisonment for five years.

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Case of
MATHUR BE-
WA.

SIR R. BARLOW, BARONET.—No doubt, the age of a criminal as *doli incapax* is one of the circumstances to be taken into consideration in the award of punishment. But it is not the only one, we must look to the intelligence of the child, and to its power of discriminating right from wrong. The state of the lower classes in Assam is one of ignorance, their females, of course, are still lower in the scale of civilization, and a child, under the circumstances in which the prisoner stands, must be dealt with accordingly. I think ten years a full measure of punishment in this case.

M.R. J. R. COLVIN.—I have had some hesitation about the proof in this case. For I think that credit cannot be given to the evidence as to the deceased having named the prisoner to the neighbours, as the person who had wounded him, early in the morning after the wounding. The prosecutor, brother of the deceased, did not reach the *thannah*, only about two *coss* off, till after 3 P. M. of that day, (the 15th April last,) and he then said nothing of the deceased having recognized any one, nor did he say that there was any party whom he himself had any ground to suspect. The neighbours did not mention the naming by the deceased, till after the police had arrived, and had their suspicions excited by finding that the prisoner had gone off. The subsequent statements of the prosecutor's wife and the neighbours are, under such circumstances, open to great doubt.

That a man, struck during the night in his sleep by two blows of a *dhow*, which pierced to his brain, should have instantly woke up so as to recognize the perpetrator, who ran off at the moment, is very highly improbable.

It is remarkable also that no enquiry has been made, during the investigation, as to what was seen of the prisoner, at the time of the wounding and after it, or during the remainder of the night, by the prosecutor, and by the prosecutor's wife, (the sister-in-law of the prisoner,) in the same room with whom she had been sleeping.

But her confessions are deliberate and consistent, and they were repeated at several dates, from the 17th April to the 4th May, the day of the trial before the Principal Assistant and jurors. They supply the only explanation, given by the record, of the cause or circumstances of the murderous attack. There is not the slightest indication, which could throw suspicion on any other quarter. The *dhow*, with which the attack was made, belonged to the deceased, and would naturally have been at the command of the prisoner as she describes. On the whole, I do not see reason to differ from the opinion of the Deputy Commissioner, which is in concurrence with that of the Principal Assistant and jurors, who, with all the advantage of per-

sonal examination, have been satisfied of the guilt of the prisoner. And I join, therefore, in convicting her of the murder.

It is very difficult to determine the appropriate punishment in such a case for a person of the age of the prisoner. She has shown, in her confessions, that she has an intelligence, which makes her responsible for the commission of criminal acts. She has proved, indeed, that she is well aware of the difference between actions, by stating that she did not intend to murder her husband, but only to punish or hurt him. The act, so far as can be judged from the record, appears to have been one of hasty and reckless spite and malice by a person, quite capable of guilt, but as yet of immature judgment.

I think the proposed sentence of imprisonment for ten years to be probably as fair and adequate as could be suggested in so peculiar a case and therefore, assent to it.

Mr. H. T. RAIKES.—The subsequent conduct of the girl, when she heard the police had been sent for, seems to me quite consistent with the account of her guilt, detailed in all her confessions, and I feel therefore no hesitation in pronouncing the conviction a proper one. With reference to the girl's age and the measure of punishment to be dealt to her in consequence, I think the sentence proposed by Mr. Dunbar sufficient.

The law of England is that, "a child between seven and fourteen shall *prima facie* be presumed to be *doli incapax*, yet so that the presumption weakens as the prisoner's age approaches puberty," and as malice supplies age, the degree of malice in the perpetration of the crime, seems to afford the proper data by which the punishment should be measured.

In this case, there is the girl's own account of the motives which actuated her, and also her declaration that she did not intend to kill her husband, I think it may be reasonably inferred that she did not meditate such a consequence of her acts, and that full responsibility should not be exacted for what seems to have been a most erroneous exercise of her judgment. Under these circumstances, ten years' imprisonment seems to me ample punishment for her offence.

1853.

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Case of

MATRUA BE-
WA.

PRESENT :

J. R. COLVIN, Esq., Judge.

MUNOHUR GHAZEE,

Tipperah.

versus

1853. TITA GAZEE MOLLAH, ALIAS, TITA MOLLAH, ALIAS
TIN COUREE MOLLAH (No. 1,) AND MAHOMED
HOSHUN (No. 2.)

July 21.

Case of TITA GAZEE.—CRIME CHARGED.—Burglary and theft of property belonging to the prosecutor valued at Rupee 1-1.
TITA MOLLAH, alias TINA MOLLAH, alias CRIME ESTABLISHED.—Burglary and theft of property belonging to the prosecutor valued at Rupee 1-1.
TIN COUREE Committing Officer.—Mr. E. Sandys, magistrate of Tipperah.
MOLLAH, and Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, another. on the 30th May, 1853.

Two prisoners convicted a burglary was effected at the house of the prosecutor. His son being aroused by the noise, ran out in time to seize one of confessions of the robbers and to observe two others escaping. The captain of the burglary, inured burglar, Joorah Gazee, died in a day or two after the which one of occurrence in consequence, as it appeared to this court, of injuries sustained by him in attempting to escape, in doing which, he ran with violence against some betel-nut trees, and killed, sentence passed fell from a bridge which broke from beneath him, into a ditch containing broken bits of earthen vessels and chips of the thorny madár tree.

His companions as I have before observed, had effected their escape, but on the 8th February a prisoner in the Noakhallee jail, requested to have his statement taken with reference to this burglary. This was done, and his deposition sent to the magistrate of Tipperah. It set forth circumstances which led to the commitment of the three prisoners in the present case, as being the parties who had perpetrated the burglary in association with the deceased Joorah Gazee.

The prisoners pleaded not guilty.

The evidence in support of the prosecution was wholly circumstantial, and of the weakest description. The prisoner Tita Gazee, however, confessed his guilt both in the mofussil and before the magistrate, and the prisoner Mahomed Hoshun did the same before the magistrate. The latter appears to be a bad character, and already to have undergone three years' imprisonment on conviction of burglary, and the Mahomedan law officer concurring with me in finding the prisoners guilty on their confessions (which appear to have been perfectly

voluntary and formal), I sentenced them, as shown in column 12.

Sentence passed by the lower court. No. 1, to 3 years' imprisonment with labour and irons, and No. 2 to 5 years' imprisonment with labour and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.) This is a case in which a clue was obtained by the police by a mere accident, through the desire of a prisoner, Azcem, who was confined in the Noakhallee jail, to bring forward the circumstances connected with the death of the captured burglar, Joorah Gazee.

He had formed an acquaintance with this Joorah Gazee, and with the prisoner No. 2., Mahomed Hoshun, while they were all under sentence of imprisonment at Noakhallee, and was desirous to accuse the party, in whose house the burglary had been committed, of having killed Joorah Gazee by ill-treatment after seizing him. The confessions of the two prisoners before the magistrate are distinct and open to no apparent suspicion, while that of the prisoner No. 2., Mahomed Hoshun, is particularly trustworthy from its having been made only to the magistrate, his statement to the police having been a denial of his guilt.

The appeals state nothing of importance, and I see no reason to interfere in the case.

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Case of

TITA GAZEE
MOLLAH, alias TITA MOLLAH, alias
TIN COURKE MOLLAH, and another.

PRESENT:
J. R. COLVIN, Esq., *Judge*.

TRIAL No. 10, MUDDUN JOOGEE,

versus

Tipperah.

1853.

SHURUFDI PUTWARRI (No. 1,) SOODI KOORAL
(No. 2,) ABOO (No. 3,) JUHIRUDDIN (No 4.)
TRIAL No. 11, KISTO MOHUN SIL,

July 21.

Case of
SHURUFDIPUTWARRI
and others.*versus*

SHURUFDI PUTWARRI (No 5,) SOODI KOORAL
(No. 6,) JUHIRUDDIN (No. 7,) ABOO (No. 8.)

Conviction of four prisoners on a charge of theft and receiving stolen property confirmed in appeal, except as to one, whose conviction was altered to that of accessory after the fact. Period of imprisonment undergone by the prisoners on the sentence of the Magistrate illegally passed by him in this case, deducted from the terms of the present sentence.

CRIME CHARGED.—*Trial No. 10.* Nos. 1 to 4, 1st count, theft of property belonging to the prosecutor valued at Rs. 15-2-6; 2nd count, No. 1, receiving and retaining in his possession property valued at Rs. 1-11-3, obtained by the above theft, knowing it to have been such. No. 2, receiving and retaining in his possession property valued at 15 annas 3 pie, obtained by the above theft, knowing it to have been such. Nos. 3 and 4, receiving and retaining in their possession property valued at Rupee 1-7-3, obtained by the above theft, knowing it to have been such. *Trial No. 11.* Prisoners Nos. 5, 6, 7 and 8, 1st count, theft of property belonging to the prosecutor valued at seventeen rupees, and prisoner No. 8, 2nd count, receiving and retaining in his possession a boat obtained by the above theft, knowing it to have been such.

CRIME ESTABLISHED.—*Trial No. 10.* Prisoners Nos. 1 to 4, theft of property belonging to Muddun Joogee prosecutor. *TRIAL No. 11.*—Prisoners Nos. 5 to 8, theft of property belonging to Kisto Mohun Sil prosecutor.

Committing Officer.—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah on the 29th March, 1853.

Remarks by the sessions judge.—The prisoners were originally tried by the magistrate of Tipperah, and sentenced on the 20th August, to various terms of imprisonment. They appealed to me from the sentence so passed, and finding that they had been implicated in another case of a similar character occurring on the same night, that the prisoner No. 3, had also been before convicted thrice of cattle-stealing and once of burglary, the prisoner No. 4, twice of cattle-stealing, and the prisoner No. 2. of culpable homicide, I quashed the ma-

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gistrate's sentence. The result was, the present commitments on the charge of theft of property valued at Co.'s Rs. 15-2-6 and at Co.'s Rs. 17.

The prisoners when apprehended made confessions at the *thannah*, which Shuruffdi Putwarree and Johiruddin (Nos. 1 and 4, the latter being the son of the prisoner No. 3), repeated before the magistrate.

There are in my opinion sufficient admissions of guilty participation in the offences with which they are charged. A part of the stolen property was discovered in the possession of each prisoner, and was satisfactorily identified in the magistrate's court as belonging to the prosecutor. It was not forthcoming in the sessions court, the prosecutor to whom it was restored having subsequently disposed of it, but the necessary evidence was taken as to the circumstances of its recovery, and of its having been recognised as belonging to the prosecutor.

The Mahomedan law officer declared the prisoners guilty of theft and liable to tazeer.

I am of opinion that the prisoners' admissions, the discovery of the stolen property, and in three of the four instances decidedly bad previous characters are sufficient to supply the defects in the evidence against them, which certainly is not of the strongest description. The prisoner Shurruffdi Putwarree does not appear to have been previously convicted of any offence against the laws, or to have been evil in his antecedents, and I am of opinion that the sentence passed upon him by the magistrate is, on the whole, sufficient. He is therefore sentenced to one year's imprisonment with labor and irons. The prisoner Loodi Kooral has before undergone a period of three years' imprisonment, with labor and irons, on conviction of the culpable homicide of a religious mendicant. On referring to the *nuthee* he appears to me to have acted under the impulse of sudden passion, rather than from any intention to do serious injury to the beggar (whom he discovered eating a jack fruit on his premises and intended to drive away), and I sentence him therefore to two years' imprisonment with labor in irons.

The prisoners Aboo and Johiruddin Nos. 3 and 4, are confirmed offenders, especially the former, who seems to have brought up his children (another of whom, Suduruddin, has, I understand, been convicted of cattle-stealing) to the trade of theft. He is stated to be a notorious bad character, and I sentence him to seven years' imprisonment with labor in irons, and his son, the prisoner Johiruddin to five years' imprisonment also with labor in irons, conceiving them to merit exemplary punishment.

1853.

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Case of
SHURUFFDI
PUTWARREE
and others.

66 CASES IN THE NIZAMUT ADAWLUT.

1853.

July 21.

Case of

SHURUFFDI
PUTWARRI
and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.) The prisoners, Nos. 3 and 4,* have appealed, but without saying any thing to shake the particular proof against them.

The confessions of the prisoner No. 4, to the police and magistrate, are of accessariship after the fact only, that is, of remaining in the boat, in which the party went, till they came back with the bundles of stolen property. Part of this property was afterwards found in the possession of the prisoners 3 and 4, who are father and son. Both have been before sentenced for theft, and the father also for burglary. The conviction of No. 4, will be changed to that of accessariship after the fact in theft; otherwise, I sustain the convictions. In concurrence with the recommendation of the sessions judge, in his letter No. 277,† of the 7th instant, I reduce the terms of sentence passed by the sessions judge on all the four prisoners, viz. 4 months and 27 days, being the period for which they were undergoing labor in *jail* under the first sentence by the magistrate, which was quashed in order that the prisoners might be tried, according to law, by the sessions court.

* The Nos. are those of the first trial.

† From the sessions judge of Tipperah to the Register of the Nizamut Adawlut, No. 277, dated 7th July, 1853.

I have the honor to beg you will submit the following report for the orders of the court of Nizamut Adawlut.

On the 20th of August, 1852, the magistrate sentenced certain prisoners, among whom were two named Loodee Kooral and Shurfuddin, the former to two years', and the latter to one year's imprisonment with labor and irons. Subsequently, the case came before the sessions judge on appeal, who finding they had been implicated in another case of a similar character occurring on the same night, and that they had also been before convicted and punished, directed the magistrate to commit the prisoners for trial before the sessions court, which was done on the 18th January following, and resulted in their being sentenced on the 29th of March, 1853, Loodee Kooral to two years', and Shurfuddin to one year's imprisonment with labor and irons.

The prisoners, however, labored in irons in terms of the sentence originally passed on them by the magistrate, during the period between that sentence and their commitment for trial before the sessions court, four months and 27 days, and have applied now to be allowed a deduction of that period from the imprisonment to which they were condemned before that sentence was passed.

It appears to me that they are entitled to the indulgence they ask, and I beg to solicit the court's sanction to grant it.

PRESENT:

J. R. COLVIN, Esq., Judge.

GOVERNMENT AND DUSTOOLLAH,

versus

JUNJAL (No. 7 APPT.), HAOOREEAAH (No. 8 APPT.),
 BASUTOOLLAH (No. 9), DEANUTOOLLAH (No. 10
 APPT.), TUHUBIL NOSYA (No. 11), AMOOLLAH
 TEHLEE (No. 12), BANKA NOSYA (No. 13 APPT.),
 JHAUPRA HAREE (No. 14), TUN MAHOMED (No. 15
 APPT.), AND WOOKEEL NOSYA (No. 16). Rungpore.

1853.

CRIME CHARGED.—Nos. 7 to 16, 1st count, dacoity attended with wounding in the house of the prosecutor and plundering property value Rs. 151; 2nd count, being accomplices in the above crime; 3rd count, having belonged to a gang of dacoits; prisoners Nos. 7, 14 and 16. 4th count, taking and having in possession property acquired by the above dacoity, knowing it to be so acquired.

July 21.
 Case of
 JUNJAL and
 others.

CRIME ESTABLISHED.—Nos. 7, 8, 10 to 16, dacoity and No. 9, being accomplice in dacoity.

Committing Officer. Mr. A. W. Russell, officiating magistrate of Rungpore.

tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 21st March, 1853.

Conviction
 and sentence
 passed by the
 sessions judge
 on prisoners
 charged with
 dacoity upheld
 in appeal.

Remarks by the officiating sessions judge.—From the statement of Dustoollah the prosecutor, and the evidence adduced on the trial, it appears that the prosecutor and his wife had taken their meal and gone to sleep on the 16th January 1853; early in the morning he was roused by a light, and thinking a neighbour's house had caught fire, he went out to see, when he found some twenty-five men outside, and discovered that the light proceeded from their *mussals*; he immediately raised the alarm and the neighbours came and the dacoits fled, but they succeeded in securing Junjal with the property on him.

Witness No. 1, Tollah Nosya the servant who was wounded, deposes that on the night in question after the evening meal he went to sleep on a box, outside the inner compartment and was awoke early in the morning by a light which he supposed to be a house on fire; he, therefore, took his *lattee* and was going there when he found himself surrounded by the dacoits; he raised the alarm and, the dacoits beating him, he ran away. By the light of the *mussal* he recognised the prisoners Nos. 8 to 13.

Panchcouree Chowkeedar witness No. 2, heard a noise, in the direction of prosecutor's house, and going there was met

1853. by a man, Junjal, prisoner No. 7, running away with the property, and with the assistance of the neighbours succeeded in securing him, when he confessed who he was, &c. Witnesses, 3

July 21. Case of JUNJAL and others. to 10, all confirm the fact of the dacoity, the seizure of Junjal and the property found being the prosecutor's.

Witnesses Nos. 4, 5, 6, 7, and 9 to 12, prove the mofussil confessions of prisoners Nos. 7 to 16.

Witnesses Nos. 13 to 17, prove the *foujdaree* confessions of prisoners Nos. 7 to 12 and 14 to 16.

Witnesses Nos. 1 to 8, 12 and 18 to 21, prove the production of the property, Nos. 1 to 13 and 15 to 21, by the prisoners Nos. 7, 14 and 16.

The prisoners all confessed before the *darogah* and with the exception of No. 18, all again confessed before the magistrate implicating each other. Before the sessions, they all deny the fact and their confessions.

Prisoner No. 7 pleads that the prosecutor and witness No. 1, have made up the story against him, but can bring no proof; he confesses to having been in the Dinagepore jail for burglary, and brings forward witnesses Nos. 23, 24 and 25 to prove his respectability.

Prisoner No. 8 pleads *alibi* and ill-usage at *thannah*. His witnesses Nos. 26 and 27, prove him to have been respectable. No. 30, denies any knowledge of him or his ever being at his house on that night, and Nos. 29 and 31, say they know nothing of ill usage at the *thannah*.

Prisoner No. 9 only confessed to being his accomplice before the *darogah* and magistrate. Here he denies and pleads ill usage, but his witnesses Nos. 32, 33, 34 and 40 can prove nothing.

Prisoner No. 10 pleads *alibi* and ill-usage. His witnesses Nos. 32, 34, 37, 38, 40 and 41, can prove nothing; do not know where he was on that night, and know nothing of ill usage at the *thannah*.

Prisoner No. 11 declares he was starved and ill-used at the *thannah*, and does not know what he said before the magistrate. His witnesses Nos. 26, 27, 29, 42, 43 and 49, can prove nothing; do not know where he was on that night, and know nothing of ill-usage and No. 31, has heard he was beaten at the *thannah*, but cannot tell from whom he heard it.

Prisoner No. 12 pleads ill-usage, but his witnesses Nos. 26, 27, 31, 45, 48, 49 and 50, know nothing about it.

Prisoner No. 13, denies and says Junjal implicated him because he had a quarrel with him, and his witnesses Nos. 51 and 53, state there was a quarrel. He does not say why the other prisoners implicated him, or why he confessed.

Prisoner No. 14 denies his confession and declares the

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shawl he had produced to the *darogah* is his own. His witnesses Nos. 49, 58, 60, 61 and 62, all deny any knowledge of the shawl being his or of ill-usage.

Prisoner No. 15 says, his confession was extorted by the *darogah*, and the *bukundaz* compelled him to repeat it before the magistrate. His witnesses Nos. 30, 47, 49 and 63, know others. nothing about it.

Prisoner No. 16 declares he was ill-used, but fails in proof, although he called witnesses Nos. 63 and 70 to 76.

I tried the case alone under Act 24 of 1843, and seeing no reason to doubt the facts and confessions, sentence them all to ten years' imprisonment each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.) The prisoners Nos. 7, 8, 10, 13 and 15, have subsequently appealed in this case.

No. 7, Junjal was apprehended at the time of the dacoity. He does not now deny that the dacoity was committed, but says that he was seized at the moment, and some property thrust upon him, in consequence of a former grudge on the part of the prosecutor. The dacoity was committed on the night of the 16th January last. The confession of this prisoner was taken by the police on the 18th January, and upon his statement in it, the prisoners Nos. 8 and 13, were apprehended. On the apprehension of No. 8, and his confession made on the 21st January, the prisoners Nos. 10 and 15, were apprehended. All the prisoners have confessed to the magistrate, except No. 13, and as he was named in the first statement of the prisoner No. 7, who was seized on the spot, I think that his mofussil confession cannot, there being no circumstances to raise any suspicion in the case, be discredited. One prisoner No. 14, Jhauprah Haree, who also had made a mofussil confession, was before acquitted by me, but he had not been named in the first statement of the prisoner No. 7.

On the whole, I see no ground to interfere with any of the convictions and sentences.

1853.

July 21.

Case of

JUNJAL and

PRESENT:

SIR ROBERT BARLOW, *Bart., Judge.*
 H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT,

versus

Nuddea. RAMGOPAL HALDAR (No. 1,) JUDOOGOPAL MOJUMDAR (No. 2,) NEPAL CHOWKEEDAR (No. 3,) BABUN SHEIK (No. 4,) PEARY MOHUN BOSE (No. 5.)

1853.

July 22.
 Case of
 RAMGOPAL
 HALDAR and
 others.

Conviction
 by the sessions
 judge of three

prisoners on a
 charge of cul-
 pable homi-
 cide annulled,
 and prisoners
 convicted of
 maltreating,
 confining and
 beating the
 deceased. A

fourth pris-
 oner, whose degree
 differed from
 his law officer,
 acquitted by
 the court.

CRIME CHARGED.—Charge 1st, 1st count, wilful murder of Bishtoo Ghose; 2nd count, accomplices in the said charge. Charge 2nd, 1st count, culpable homicide of Bishtoo Ghose; 2nd count, accomplices in the said charge. Charge 3rd, 1st count, severely beating and maltreating the said Bishtoo Ghose; 2nd count, accomplices in the said charge; 3rd count, accessories to the said charge before the fact. Charge 4th, privity to the above charges.

Committing Officer.—Mr. C. T. Montresor, magistrate of Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 14th May, 1853.

Remarks by the officiating additional sessions judge. The prisoners are charged, firstly with wilful murder, secondly with culpable homicide, and thirdly with aggravated assault and battery, with the minor counts of complicity, accessorialship and privity in those crimes, and plead not guilty.

A tender of conditional pardon was made to and accepted by the first witness examined for the prosecution, who briefly regarding details the particulars of the outrage in the following terms. The prisoner Ramgopal Haldar was robbed of a box containing cash to the amount of 27 Rupees, and the deceased Bishtoo Ghose, who it appears had been accused of theft on a former occasion, was suspected of having committed the robbery, he being at the time in the employ of the prisoner. He was arrested, and restitution of the stolen cash was demanded from him by his master, and the prisoner Judoogopal Mojumdar.

He promised compliance and took them and other prisoners to his house with the view of giving up ten rupees, which he said were secreted in the thatch. On the search proving fruitless, the deceased was beaten and carried bound to the indigo factory to which the prisoner Ramgopal is attached as *dewan*. He was again beaten and otherwise maltreated there, the following day, and died from the effects of two blows from the butt-end of a club applied by the prisoner Judoogopal, and his

body thrown into the river Angona, which flows by the factory.

This evidence stands alone as to the homicide of the deceased, and is clear on that point; but I am not without my suspicions that the witness has withheld information within his knowledge, particularly as regards his own agency in the transaction, and the part taken by the other prisoners who, like him, are attached to the factory. He has however disclosed sufficient for purposes of this trial, which has resulted in the conviction of the prisoners.

The next witness gives a very clear and detailed account of the transaction in a collected and unhesitating manner. He describes himself as in the employ of the prisoner Ramgopal Haldar, and present at the various acts of ill-usage and hardship done to the deceased, with the view to induce him to restore the money. In addition to the beating spoken to by the last witness, he particularizes a species of torture by compression between bamboos to which the deceased was subject, under the violence of which he prayed for time to make good the loss, which was enlarged at noon of the following day, but before the expiry of which he effected his escape and is said to have been drowned in attempting to cross the river under hot pursuit.

There are some trifling discrepancies evident between his statement before the magistrate and this court, particularly with reference to the rumour of the deceased having been drowned in crossing the river, but the testimony as a whole is a consistent story, and must be taken as evidence strongly corroborative of the prisoner's guilt, in having caused and been instrumental in the death of the deceased by means of ill-usage and cruel treatment.

The four following witnesses detail generally the assault and cruel usage, and bring specific acts home to the parties accused. Their testimony serves as strong connecting links in the grand chain of evidence against the prisoners.

The evidence of the civil surgeon tends to shew that the neck of the deceased was broken, and that there was a large bruise on the upper part of the head, though the bone of the skull was not broken. He reports the body as being in the highest state of decomposition when forwarded to him for examination, and says that in consequence he was quite unable to speak positively as to the cause of death, or to state whether the injury to the neck was inflicted before or after decease. He appears decidedly of opinion that the body could not have been immersed under water for three days from the perfect state of the outer skin, and affirms that it is the general rule, though not an infallible proof of the fact that in death by

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July 22.
Case of
RAMGOPAL
HALDAR and
others.

1853. drowning there is water in the cavity of the chest and stomach, which was not the case in the present instance.

July 22. The two remaining witnesses for the prosecution prove the finding of the body, and the marks it exhibited, and attest the record of the inquest held by the *darogah*.

Case of RAMGOPAL HALDAR and others. All the prisoners deny the charge and plead *alibi*, citing witnesses in proof. The prisoner Ramgopal Haldar admits that he was robbed and the deceased suspected of the theft, and indirectly acknowledges that some hard treatment was observed towards the latter to induce him to give up the money, and that he was drowned in crossing the river in an attempt to fly from his tormenters.

A large number of witnesses were examined for the defence, but their evidence failed to substantiate the pleas urged by the prisoners. Some of them attempt to prove that the deceased was drowned, but the evidence is defective and not to be relied on.

The *futwa* of the law officer convicts the prisoner Judoogopal Mujumdar and Nepal Chowkeedar of the culpable homicide of Bishtoo Ghose, and the prisoner Ramgopal Haldar of being an accomplice therein, and declares them liable to discretionary punishment by *decut* (*kamil*). It convicts the prisoner Babun Shekh of being privy to the culpable homicide and present during its commission, and declares him liable to *tadeeb* (*admonition*) and it acquits the prisoner Peary Mohun Bose on account of his youth, and declares him entitled to his release.

I concur in the finding as regards the prisoners Ramgopal Haldar, Judoogopal Mujumdar and Nepal Chowkeedar and, convicting them of having caused, and been instrumental in the death of Bishtoo Ghose by means of grievous ill usage, have sentenced them to seven years' imprisonment with labor in irons.

I differ from the finding against the prisoner Babun Shekh, and reject the *futwa* which declares him liable to be admonished only, although the law officer would be understood to extend that admonition to stripes and imprisonment, as a penalty legitimately due under the operation of *tudeeb*.

I regard the evidence against the prisoner Babun to be as complete as against the rest, and would convict and sentence him as above. It is owing to this difference of opinion between the law officer and myself that the trial is referred for the orders of the court.

I concur in the release of the prisoner Peary Mohun Bose, as he is a mere boy, and his presence during the events was, rather the result of circumstances which he could not control, than choice, and any desire to countenance them.

Remarks by the Nizamut Adawlut.—(Present : Sir Robert Barlow, Bart. and Mr. H. T. Raikes.) The post mortem examination was so defective, in consequence of the decomposed state of the body when sent into the station, that we find it quite impossible to determine the exact cause of death.

The medical officer states that the neck was broken, but whether that injury was occasioned before or after death, he cannot say.

Such evidence, on the part of the prosecution, as attempts to bring home the death to the prisoner, leads to the impression that it resulted rather from prolonged ill treatment, than from any such violence as would have broken the neck of the deceased. The mofussil *sooruthal* itself does not account satisfactorily for the death ; the body when taken out of the river did not exhibit the marks of the blows, such as are described in the sessions judge's letter, and are the assigned cause of death.

The evidence of the approver Luchmun, which as the sessions judge says, stands alone as to the homicide of the deceased, would not justify a conviction on that charge. The discrepancies in his statements before the magistrate, on the 9th March, as a prisoner, and in the mofussil on the 8th idem, as compared with his deposition when admitted approver on the 22nd of March, before the magistrate, are manifest and deprive his evidence of all credit, therefore his deposition that he saw the deceased fall and *die*, whether, as he alleges on the 9th of March, in his answer, by a blow inflicted by Ramgopal prisoner No. 1, or by one given by Judoogopal as stated in his deposition before the magistrate on the 22nd of March, is not that clear and conclusive proof of death, arising from an assault committed, as could justify any conviction on the charge of culpable homicide in this case. No other witness in the calendar speaks to his own individual knowledge of death having ensued upon the assault, they all depose to. There are consequently no sufficient data for us to determine how death took place. The prisoners must therefore be acquitted of the charge of culpable homicide. There is however evidence sufficient to establish that a protracted mal-treatment, and an illegal assumption of authority, on the part of the prisoners (with one exception,) in confining the deceased and beating him, for the purpose of eliciting the facts, connected with the theft and recovery of the money alleged to have been lost by the prisoner No. 1, did take place.

To this extent we consider the prisoners Nos. 1, 2 and 3, are guilty, and sentence them to two years' imprisonment with a fine; In the case of the prisoner Ramgopal Haldar of 200 Rupees in default thereof to labor; and in the case of

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Case of
RAMGOPAL
HALDAR and
others.

1853. No. 2, to 100 Rs. or labor; and in the case of No. 3, to 20 Rs. or labor, during the time of their imprisonment, if not paid within one month from receipt of this order, or till such fine be paid.

July 22. Case of RAMGOPAL Haldar and others. The evidence against the prisoner Babun is not sufficiently conclusive in our judgment to warrant his conviction; we therefore acquit him.

PRESENT:

J. R. COLVIN, Esq., Judge.

DWARKANATH NEUGE AND GOVERNMENT,

versus

Hooghly.

NUFFER KOWRAH.

1853. CRIME CHARGED.—1st count, dacoity in the house of the prosecutor on the night of the 13th December, 1852, and plundering therefrom property to the amount of Rs. 255; July 22. 2nd count, receiving a part of the above stolen property knowing it to be such.

Case of NUFFER Kow. RAH. CRIME ESTABLISHED.—Dacoity and keeping in his possession a portion of the plundered property knowing it to have been obtained by dacoity.

Conviction and sentence in a case of dacoity upheld in appeal. Committing Officer.—Mr. R. B. Chapman, officiating magistrate of Hooghly.

The court observe that the punishment of banishment might have been added, being an old offender. Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 21st February, 1853.

Remarks by the officiating sessions judge.—The prisoner is charged on the first count, with committing a dacoity in the house of the prosecutor, on the night of the 13th December, 1852, and plundering therefrom property to the amount of Rs. 225. On the second count, with receiving a part of the above stolen property knowing it to be such.

He pleads not guilty. Before the magistrate and police he confessed stating that he was intoxicated, having been made so by the other dacoits. Prosecutor lives in Nobogram *thannah* Hooghly. He was sleeping in the upper story of his dwelling, no other members of his family being at home, when the dacoits made their attack at about 1 o'clock in the morning. He ran from fear and hid himself in the garden adjoining his house; after the dacoits had gone, he returned and found that his boxes and chests had been broken open and silver ornaments and property stolen to the value stated in the calendar.

The prisoner was arrested on the same night on the high road making towards Calcutta, by the witnesses Alce Ahmud Jemadar, Rungutee Pandey and Nuffer Chowkeedar, who were on their rounds; there were several other persons along with him who escaped; one of them threw away a gun, which is produced before the sessions.

The charges I conceive clearly established against the prisoner by the terms of his own admissions before the police and magistrate, and his arrest with the plundered property, which is clearly proved to have been taken from the prosecutor's house. Prisoner is an old offender, the dacoity a daring one, I sentence him to imprisonment for fourteen years with labor and irons, and two additional years with the same in lieu of stripes.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.) The prisoner in his appeal admits his seizure on the road by the police before dawn, on the morning after the dacoity, but with particulars which are not consistent with his defence on the trial, and not supported by any evidence on the record. The witnesses speak throughout clearly to his having been seized with all the articles of property (22) upon him, and indeed, before the intelligence of his seizure reached the *darogah* of the Hooghly *thannah*, there was information given to that officer by the witness, No. 4, Huree Chowkeedar of the village where the dacoity was committed, of the prisoner having been recognized by him among the dacoits by torch light. This witness and another, Ramchand Kowra, depose to the same effect on the trial. The prisoner's confession to the magistrate is also well proved. I see no ground whatever to doubt the propriety of the conviction and sentence.

The following remark was communicated to the sessions judge on perusal of the report of this case in the monthly statements.

"The court would observe that the addition of banishment to a sentence of long imprisonment on an old offender, such as this prisoner is described to be, may often be very proper and expedient."

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July 22.

Case of

NUFFER KOW-
RAH.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT AND SOOJEE MUNDUL,

versus

FURREED SHEIKH.

Rajshahee.

1853.

CRIME CHARGED.—Attempt at committing dacoity in the house of the plaintiff.

July 22.

Case of

FURREED
SHEIKH.

The prisoner
was convicted
by the sessions
judge of at-

CRIME ESTABLISHED.—Attempt to commit dacoity.

Committing Officer.—Baboo Gopaul Loll Mitter, deputy magistrate at Nattore.

Tried before Mr. H. Stainforth, officiating commissioner of Rajshahye with powers of a sessions judge, on the 10th May, 1853.

commit dacoity. The Nizamut Adawlut seeing the evidence insuffi-

cient to prove that a dacoity was attempted, the evidence against him consists in his voluntary confession before the police and his capture *flagrante delicto*.

Before this court he pleaded not guilty; he urged that he had been servant of prosecutor's brother, and as he would not that a dacoity return to his late employer's service, and because he had caused apprehension of prosecutor's brother, in a *foujdaree* case, prosecutor bore enmity to him.

Sentence passed by the lower court. Imprisonment for ten years, with labor in irons.

the prisoner, Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) Apart from the confession of the prisoner, there is no sufficient evidence to prove that a dacoity was attempted.

Meesoo Paramanik deposes, that about half-past 10 o'clock at night he met several persons, and that on questioning them, he was struck with a *lattee*, upon which he called out, when presently the prosecutor called out to him to come to him, as he had been struck; he accordingly went and saw that the prosecutor had seized the prisoner. The prosecutor on the other hand, swears that he was saying his prayers, and that hearing Meesoo call out, he went towards him, when he was seized by the prisoner. The other witness, Muddun, swears that hearing the prosecutor call out, he went to the spot, and found the prisoner in custody; no particulars of the numbers, appearance, or proceedings of the dacoits are given, nor any reasonable cause assigned for the flight of the dacoits. As to the confession, I observe that it bears no certificate of the nature prescribed, to shew that it was made voluntarily, and it goes into the history of another dacoity quite unconnected with

the charge upon which the prisoner was in custody. The prisoner asserts enmity on the part of his accusers; this is not made out, but so much suspicion attaches to the whole case, that I can place no reliance on the confession, and accordingly acquit the prisoner.

1853.

July 22.

Case of

FURRED

SHEIKH.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

SHEKAROO MOLLAH.

Rungpore.

CRIME CHARGED.—Perjury in having, on the 9th February, 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the *darogah* of *thannah* Dewangunge, that while he was absent from his house at a *muzlish*, his wife, Money Aurut, apprehended Palungee Aurut in the act of stealing some “*sursoo*,” and in having on the 3rd March, 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the officiating joint-magistrate of Bograh, that he himself had apprehended Palungee Aurut in the act of stealing the *sursoo*, such statements being contradictory of each other on a point material to the issue of the case.

1853.

July 22.

Case of

SHEKAROO
MOLLAH.

The prisoner was convicted of perjury by the sessions judge. The variation in his statements being regarded rather as the result of weakness than of deliberate intention, the sentence was reduced from 3 to 1 year's imprisonment.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 19th April, 1853.

Remarks by the officiating sessions judge.—The prisoner is charged with perjury in having, on the 9th February, 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the *darogah* of *thannah* Dewangunge, that while he was absent from his house, at a *muzlish*, his wife, Money Aurut, apprehended Palungee Aurut in the act of stealing some *sursoo*, and in having, on the 3rd March, 1853, again intentionally and deliberately deposed, under a solemn declaration, taken instead of an oath, before the officiating joint-magistrate of Bograh, that he himself had apprehended Palungee Aurut in the act of stealing the *sursoo*; such statements being contradictory of each other on a point material to the issue of the case.

This charge was proved by the witnesses on the part of the prosecutor (Government).

The prisoner offered no defence.

1853. The jury, consisting of Kartick Chunder Chowdhry, By-kuntnath Mitter and Golucknath Doss, return a verdict of guilty, and I agree.

July 22. Case of SHEKAROO MULLAH. Sentence passed by the lower court. Three (3) years' imprisonment with labor, without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoner, when put on his defence before the magistrate, admitted that he had inadvertently made inconsistent statements, as to the person who had caught Palungee Aorut in the act of stealing the *sursoo*. On the trial he does not deny this and offers no defence. Both his statements as to the alleged theft, however, were substantially the same in all other respects. The probability seems to be, that the variation in his statement was made with a view to save his wife from being brought before the court at all, or at all events to save her from being made the principal witness. I observe that the joint-magistrate acquitted the woman charged with the theft, but there is nothing in his *roobucaree*, to shew, that he thought the complaint a false one. Viewing the guilt of the prisoner, rather as the result of weakness than of deliberate intention to do wrong, I think, the case is one which admits mitigation of punishment. I accordingly reduce the term of imprisonment with labor to one year.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT,

Rajshahye.

versus

CHUMAROO SHEIKH.

1853. CRIME CHARGED.—1st count, dacoity in the house of Oojul Mundul; 2nd count, accessory before and after the fact; 3rd count, knowingly receiving plundered property.

July 22. Case of CHUMAROO SHEIKH. CRIME ESTABLISHED.—Dacoity.

The prisoner, committing Officer.—Baboo Gopaul Loll Mitter, deputy magistrate at Nattore.

convicted on a charge of dacoity by the sessions judge, 1853. Tried before Mr. H. Stainforth, officiating commissioner of Rajshahye, with powers of a sessions judge, on the 20th May,

was acquitted by the Nizamut Adawlut on the ground of general insufficiency of evidence. *Remarks by the officiating Commissioner.*—Some persons, about ten or twelve in number, are sworn to have burglariously entered the house of Oojul Mundul at night, lighted a torch, seized him, bound him and threatened him with death, if he would not disclose where his money was, and to have carried off 100 Rs. in cash and a *dao* or *chopper*.

CASES IN THE NIZAMUT ADAWLUT. 79

The prisoner was recognised by Oojul Mundul and Apoocha, a neighbour, as one of the dacoits, and he was apprehended accordingly.

He denied guilt, pleading *alibi*, and one of his witnesses swore to the *dao* being the prisoner's property. They proved his having been previously sentenced in a case of dacoity to seven years' imprisonment. *

The prisoner is sentenced on the evidence of the persons who recognised him at the time of the dacoity, to ten years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The evidence shews that a body of from ten to sixteen men effected an entry into the prosecutor's house, by cutting a large hole in the foundation earth, below the door; the entry was burglarious, but, with reference to the number of persons concerned, their acts of violence towards the prosecutor, and the remains of torches found by the *darogah*, the case has been properly treated as one of dacoity. The evidence against the prisoner, is not, in my opinion, sufficient for conviction. There can be little doubt, that the Chowkeedar of the village must have known all the particulars, before he started to give information at the *thanah*, yet in his statement to the *darogah*, he says that he himself had not recognised any of the dacoits, and that he did not know whether the prosecutor had recognised any of them or not. He would not have made this statement, had the prosecutor mentioned Chumaroo's name; and had he heard of Apoocha's recognising one of the dacoits, he would of course have said so. Again, the prosecutor when giving his deposition before the *darogah*, said not a word about Apoocha's having recognised the prisoner, although he mentioned him as one who would know the *dao*. As to the identification of the *dao*, it must be admitted that there is often so great a similarity in these articles, that this is no easy matter. The prosecutor's witnesses swear that it is his. Wullee Mundul and Hossein swore before the magistrate, that it is the prisoner's; the former gave evidence to the same effect, on the trial, and it is to be presumed that the latter would have done so also, but strange to say, he was asked no question, about the *dao*. The prisoner himself remarked, reasonably enough, in his defence, that if he had really got the *dao* by the dacoity, he would not have been fool enough to keep it openly in his shop, so soon after. Deeming the evidence, as to the recognition of the prisoner and the identification of the *dao*, open to suspicion, I acquit the prisoner and direct his release.

1853.

July 23.

Case of
CHUMAROO
SHEIKH.

SIR ROBERT BARLOW, BART., Judge.

GOVERNMENT,

versus

MAMLUT SHEIKH (No. 5), JEETUN SHEIKH (No. 6).

1853. **CRIME CHARGED.**—Prisoner No. 5, with having assaulted and wounded the prosecutor to such an extent, that the radial bone of his right arm was fractured thereby. Prisoner No. 6, with having been an accomplice in the said offence.

MAMLUK CRIME ESTABLISHED.—Prisoner No. 5, assault with wound-
SHEIKH and ing, and prisoner No. 6, accomplice in the above offence.
another. Committing Officer.—Moulvee Abdool Juhhan, law officer.

In a case of exercising powers of magistrate at Moorshedabad.

In a case of assault by which an arm was dabbed, on the 10th May, 1853.

Remarks by the sessions judge.—On the 28th February, 1853, the prosecutor and the prisoners quarrelled about some straw in a field, when the prisoner Jeetun seized the prosecutor by the neck, and the prisoner Mamlut took up a bar of wood, held to be too weighing one seer thirteen chittacks, with which he struck severe and reduced by the prosecutor on the arm, leg and waist, and brought him to court to two years. The assault was proved by four witnesses who saw it a little distance off, and who stated in their evidence that, as they hastened towards the prosecutor with a view to save him, the prisoners went away, leaving the prosecutor on the spot.

From the Civil Surgeon's deposition it appears, that the bone of the prosecutor's right arm was fractured, but had afterwards united, and that it would be some time before the prosecutor recovered the use of his arm. He also stated, that a very slight force with such a weapon, as that which the prisoner used, had it struck the prosecutor on the head, would have broken his skull. The crime with which the prisoners stood charged was proved against them. The assessors who sat with me on the trial, considered them guilty, and concurring in the verdict and considering the kind and weight of instrument used, and all the circumstances of the case, I sentenced the prisoners as stated in the proper column.

Sentence passed by the lower Court. Four (4) years' imprisonment, and a fine of fifty (50) Rs., or, in default of payment, to labor.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.) The prisoners had an altercation with the prosecutor, and Manlut, in a moment of anger, struck him on the arm, and broke it. The other prisoner, Jeetun, aided in the assault. The sentence is too severe, and is reduced to two years, without irons, and twenty Rs. fine, in default to labor.

PRESENT :

SIR ROBERT BARLOW, BART., *Judge.*

NITTANUND DUTT AND GOVERNMENT,

versus .

SHEIKH SHONAOOLLAH.

Mymensingh.

CRIME CHARGED.—Burglary in the prosecutor's house and theft of property valued at Rs. 2, 4 annas.

1853.

CRIME ESTABLISHED.—Burglary.

July 23.
Case of
SHEIKH SHO-

Committing Officer.—Mr. E. Alexander, officiating magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 16th May, 1853.

Remarks by the officiating sessions judge.—On the night of the 29th Bhadoon last, the prosecutor Nittanund Dutt was sleeping in an out-house, and at midnight, having occasion to go inside the house, he saw a person (the prisoner) in the act of escaping from a hole made in one of the houses, when the prosecutor immediately seized him and giving the alarm, witnesses Nos. 1, 2 and 8, and another person came up and secured him, and they found upon him a 'Khooruh' property No. 1, and missing other property they began to search the premises, when at about 25 yards distant in a jungle, they found property Nos. 2 to 5, which he must have carried there before he returned for the other property. The prisoner having been made over to the police, confessed committing the crime, which he repeated before the magistrate, and these confessions have been verified by the subscribing witnesses. In this court he denied the charge, urging that there is enmity between him and the prosecutor on account of their cows destroying each other's fields; that he had criminal intercourse with the prosecutor's sister, a widow whose name he does not know; that he went there for that purpose, he was seized, ill-treated, and falsely denounced as a thief, the prosecutor having previously made a hole to shew that a burglary was committed. He denied his mofussil, but acknowledged his *foujdaree* confession. The witnesses cited by him could say nothing in his favor; on the contrary witness No. 10 said, he had heard he was caught as a thief and witness No. 11, that he was a man of bad character, and was punished before for cattle theft. The *futwa* of the law officer convicts the prisoner of the crime charged, and declares him liable to *tazcer* in which

1853. I concurred. The prisoner was apprehended in the act of escaping from the hole with the property found upon him,

July 23. while other property was also discovered near the house in a jungle where he must have carried it. It further appears from a *kyfeeyut* of the magistrate's office that he was twice before punished, once on the 28th May, 1850, with one year's imprisonment for cattle theft, and again on the 18th July, 1851, with six months' imprisonment for simple theft. His *mofussil* and *soujdaree* confessions have been verified by the subscribing witnesses, while his defence has not been supported by the witnesses named by him. The magistrate committed this prisoner under Construction No. 1273 of the 28th February, 1840.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.) The prisoner was seized on the spot; he had entered the house through a hole in the wall which was seen by the witnesses. He appears to have been somewhat roughly treated by the owner of the house, but his confessions were voluntarily made on the 13th and 16th September before the police and the magistrate. The prisoner is an old offender. I see no reason to interfere with the sentence.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

DOOKHEERAM CHUNG.

Hooghly.

CRIME CHARGED.—With having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 27th June, 1853.

Remarks by the sessions judge.—The prisoner pleads guilty, and confessed to the charge of having belonged to a gang of dacoits; he admits having been concerned in several dacoities, own confession and this confession is supported by the evidence of the approver, Sreenath Dutt, who accompanied him in the dacoities.

There are one or two immaterial discrepancies in the deposition of the approver when compared with his own confessions before the commissioner, but these are not sufficient to shake the credit generally to be attached to the confessions.

I recommend that the prisoner be sentenced to transportation for life beyond seas in imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoner pleads guilty; he confesses to having been concerned in seven distinct dacoities, six of these cannot be traced in the records, probably because river dacoities are very often not reported. One was committed on the river near Taked in *Magh*, 1258, B. S., the deposition of the owner of the boat is with the record.

The prisoner states that he was engaged in three dacoities with the approver, the statement of the latter is to the same effect, their statement in regard to one do not agree in all points, but correspond in all essential particulars in two instances; all three are mentioned in the approver's original confession.

His own confession and the evidence furnished by these facts establish the charge. I accordingly sentence the prisoner, Dookheeram Chung, to imprisonment for life in transportation beyond sea.

PRESENT:

J. DUNBAR, Esq., Judge.

Patna.

1853.

July 23.

Case of
RAMNATH
SINGH and
others.Prisoner con-
victed of se-
verely wound-
ing the pro-
secutor, sen-
tenced to five
years' impri-
sonment and
his accom-
plices to four
years. Appeal
rejected.

KOONJA SINGH AND GOVERNMENT,

versus

RAMNATH SINGH (No. 9,) DOORGHA SINGH (No 10,) TEJA SINGII (No. 11,) AND NAGUR SINGH (No. 12.)

CRIME CHARGED.—No. 9, severely wounding the prosecutor with a sword, and Nos. 10, 11 and 12, being accomplices in the crime.

CRIME ESTABLISHED.—No. 9, severely wounding the prosecutor with a sword, and Nos. 10, 11 and 12, being accomplices in the crime.

Committing Officer.—Mr. F. J. Cockburn, assistant, with powers of joint magistrate.

Tried before Mr. R. J. Longnan, sessions judge of Patna, on the 18th March, 1853.

Remarks by the sessions judge.—Prosecutor Koonja Singh says that he is Burahil of Dowlutpore, he found as he was walking over the cultivation a short time before sun set, the prisoners Nos. 10, 11 and 12, robbing the field of a cultivator named Gunnesh Rai, and taxed them with the fact, on which they entered into an altercation with him, and being joined by No. 9, the latter dealt a violent blow with a sword and the others beat him with *lattees*, leaving him senseless and bleeding in the field, from which he was taken by the witnesses. Five witnesses declared they had witnessed the robbery of the field, the wounding of the prosecutor by prisoner No. 9, with a sword (who is stated by some of them only to have been with the other prisoners robbing the field) and the beating of the prosecutor by the other prisoners after he had been wounded. The evidence of the civil surgeon shewed the wound on the prosecutor's back to have been very severe, so as to endanger his life. From the evidence of Hemraj Singh a burkundauz, as well as from the defence of Ramnath and Teja Singh, it appears that all the four prisoners went to his *udda*, about a *coss* from the village of Dowlutpore, at two *ghurries* in the morning of Wednesday, the morning after Koonja Singh was wounded, and Koonja Singh and others of robbing Ramnath's field in the adjoining *mouzah* of Peeareea on the night in question. This is the defence of Ramnath and Teja Singh, while Doorga Singh and Nagur Singh endeavoured

to prove an *alibi*. Not being able to rely on the testimony of their witnesses, I concurred in the futwa and sentenced the prisoners accordingly.

Sentence passed by the lower court.—Prisoner No. 9, to be imprisoned with labor in irons for five years, and prisoners Nos. 10, 11 and 12, to be imprisoned without irons for four years from this date and each to pay a fine of Rs. 50 on or before the 2nd of April, 1853, or, on default of payment, to hard labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) There are some discrepancies in the evidence for the prosecution, but they are not of a character to induce any doubt as to the main facts deposed to. I see no reason to interfere, and reject the appeal.

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July 23.
Case of
RAMNATH
SINGH and
others.

PRESENT:

II. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND PEARY MOHUN CHOWDHOOORY,

versus

RAMESSUR HAREE (No. 11,) AND TARA HAREE
(No. 12.)

East
Burdwan.

CRIME CHARGED.—No. 11, 1st count, with having committed dacoity at the house of the prosecutor, Peary Mohun Chowdhooory in which property to the value of Rs. 74-12 As. was plundered; 2nd count, knowingly having in his possession plundered property acquired by the above dacoity. No. 12, having committed the above dacoity.

CRIME ESTABLISHED.—Prisoner No. 11, dacoity and knowingly having in his possession plundered property acquired by the above dacoity, and No. 12, dacoity.

Committing Officer.—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 3rd May, 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed with ten others, entered in statement No. 8 of this court for the present month, and charged severally with dacoity and receiving and dacoity. The prosecutor deposes that his house was attacked by a gang of about twenty dacoits, who entered and plundered the room he occupied.

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July 23.
Case of
RAMESSUR
HAREE and
another.

Two prison-
ers convicted
of dacoity and
sentenced by
the sessions
judge to 14
years' impris-
onment. In
appeal the sen-
tence on one
prisoner con-
firmed, the
other acquit-
ted.

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Case of
RAMESSUR
HAREE and
another.

pied ; that he recognised five persons while in the act, the prisoner Ramessur Haree among them, and was one of those who followed the dacoits on their retreat up to a short distance. He further states that he had scarcely reached home on his return, when the villagers brought in the prisoner Ramessur in a wounded state with a tin box in his hand, which he recognised as his property, together with a pair of bangles of base metal found in it. He adds that the prisoner then and there disclosed the names of his associates, on his bandages being loosened and the general assault made against him being suspended, and admitted his complicity in the affair. Several persons identified the prisoner Ramessur among the gang during the attack, and seven witnesses depose to his arrest with the property, after having received a spear-wound. It is also in evidence that the prisoner freely and voluntarily confessed before the police and the magistrate. The evidence against the prisoner Tara Harce is, that he was recognised by one of the witnesses, confessed the crime before the police and when arrested, exhibited a fresh wound on his back for which he failed to account in the manner pleaded. He was not taken till two days after the dacoity and then stated on being interrogated about his wound, that he had been hurt by a fall from a date tree which caused the *dao* he carried in his waist-band to enter his flesh, but this plea he entirely failed to establish. Both the prisoners plead "not guilty" before this court and repudiate their confessions, the prisoner Ramessur affirming that the witness Muddusudun (the person who wounded and arrested him) has brought this charge against him from annoyance at having found him, the prisoner, speaking to his wife in the fields one night, and pleading an *alibi*, and the prisoner Tara Haree making the above noticed defence as to the manner in which he obtained the wound on his back. Several persons were examined in support of the pleas but failed to establish them. I have no doubt of the guilt of the prisoners, and the consistent detail in all the confessions as to the persons concerned in the dacoity and the manner in which it was perpetrated add weight to my conviction.

Sentence passed by the lower court.—To be imprisoned with hard labor and irons for fourteen (14) years each in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.) There is ample proof against the prisoner Ramessur Haree, who was captured with property as the dacoits were leaving the village, but the evidence against Tara Haree seems to me weak and inconclusive. He is named by one witness only as being among the dacoits, and is alleged to have confessed in the mofussil, and to have had a fresh wound on his

back, but the recognition of the single witness was recorded in the mofussil *after* the prisoner's apprehension; on this recognition and the confession I place no reliance, no one deposes to having seen the prisoner wounded; this fact therefore stands alone and is insufficient in itself for his conviction. I therefore acquit the prisoner Tara Haree, and confirm the sentence proposed by the sessions judge on the prisoner Ramessur Haree.

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July 23.
Case of
RAMESSUR
HAREE and
another.

PRESENT :
J. DUNBAR, Esq., Judge.

VAKEEL OF GOVERNMENT,

versus

JADOO MANJEE.

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer.—Mr. S. Wauchope, commissioner for the suppression of dacoity.

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Case of
JADOO MAN-
JEE.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 15th June, 1853.

Remarks by the officiating sessions judge.—The prisoner is charged with having belonged to a gang of dacoits and pleads not guilty. Before the commissioner he confessed in a detailed confession, on the 23rd September and again on the 28th. He admitted that he was associated in a gang with the approver, Sreenath Dutt, and enumerates several dacoities in which he was concerned along with him.

Prisoner convicted of having belonged to a gang of dacoits and sentenced to transportation for life.

The approver on whose evidence and the above confessions, the prisoner is committed, deposes to his having accompanied him in seven different dacoities. I see no reason to doubt either the confessions recorded before the commissioner, which are duly witnessed and attested on the evidence of the approver, and on these grounds convict the prisoner, whom I recommend to be transported for life beyond seas in imprisonment with labor and in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoner pleads not guilty, but his confessions before the commissioner for the suppression of dacoity are duly proved.

The approver swears that the prisoner has been in the habit of committing dacoity with him, and reference to the approver's original confession shows that he then implicated the prisoner in ten separate dacoities. The details of three

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of these, as given both by the approver and by the prisoner in their respective confessions, correspond.

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Case of
JADOO MAN-
JEE.

The statement of the prisoner in regard to one dacoity is fully corroborated by the *nuthoo* of the case, sent down by the sessions judge. That no records are to be found connected with any of the other dacoities confessed to by the prisoner, is probably owing to the fact, that they were all river dacoities. These are very often not reported, I hold the evidence sufficient to establish the charge, and sentence the prisoner, Jadoo Manjee, to imprisonment for life in transportation beyond sea.

PRESENT :

J. R. COLVIN, Esq., Judge.

H. T. RAIKES, Esq., Officiating Judge.

KASHEENATHI KYBURT,

Tipperah.

versus

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SHEIKH POYZARIE (No. 1,) PANDUB (No. 2,) HA-
ZARI (No. 3,) BUKSILIEE (No. 4,) AND SOYNUDDIN
(No. 5.)

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Case of
SHEIKH POY-
ZARIE and
others.

CRIME CHARGED.—Nos. 1 to 3, wilful murder of Bhageeruth Kyburt, son of the prosecutor; Nos. 4 and 5, aiding and abetting in the above.

Committing Officer.—Mr. E. Sandys, magistrate of Tipperah.

Three prisoners charged with wilful murder convicted and sentenced to transportation for life.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 22nd June, 1853.

Remarks by the sessions judge.—About ten days previous to the occurrence, the subject of this report, some cattle belonging to the prisoner, Sheikh Poyzarie (No. 1,) and his brothers, the prisoners, Pandub (No. 2,) Hazari (No. 3,) Soynuddin (No. 5, Calendar No. 2,) strayed on the cultivation of the deceased, Bhageeruth Kyburt, who in the course of the alteration that ensued, appears to have struck the prisoners, Sheikh Poyzarie and Pandub. This circumstance excited much irritation in the minds of the brothers, and gave rise to a declared determination to be revenged on the first favorable opportunity, which unfortunately presented itself very shortly after.

On the 27th of May, the deceased, Bhageeruth Kyburt, proceeded in company with his brother, Gopal Kyburt, (witness No. 1,) to a field on the banks of the river for the purpose of gathering in the crop, taking with them a boat in which to convey it home. The field in question seems to have

been within view of the prisoner's home, and indeed sufficiently near to it, to enable them to recognize the deceased. Here was the wished-for opportunity, and the prisoners taking with them a servant, named Bukshee, (prisoner No. 4,) hastened to take advantage of it. What followed will be best told by reference to the evidence of the witnesses for the prosecution.

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Case of

SHEIKH POYZARIE and
others.

Gopal Kyburt (witness No. 1,) deposed to having accompanied his elder brother the deceased, Bhageeruth Kyburt, to cut and bring home the crop growing on the river-side. While thus occupied, the prisoner, Sheikh Poyzarie (No. 1,) approached and pushed the boat afloat. Looking behind him, the witness saw the prisoners, Pandub (No. 2,) Hazari (No. 3,) Bukshee (No. 4,) and Soynuddin (No. 5, calendar No. 2,) drawing near. Alarmed at this, the deceased, Bhageeruth Kyburt and the witness ran into the river, and the prisoners jumped into the boat with the purpose of following and assaulting them. The witness leaving the river, attempted to escape on dry land, when the prisoners Bukshee (No. 4,) and Soynuddin (No. 5, calendar No. 2,) quitting the boat, pursued and struck him two or three blows. The prisoners, Sheikh Poyzarie (No. 1,) Pandub (No. 2,) and Hazari (No. 3,) remained in the boat and commenced beating the deceased, Sheikh Poyzarie, with a *luggee*, (a heavy bamboo, six cubits in length and weighing two seers and six chittacks) Pandub with a *lattee*, and Hazari with the paddle of the boat, which is about four and a half cubits in length and two seers and nine chittacks in weight. The witness now effected his escape, and hastening home, informed his father, the prosecutor, of what had occurred. Search was made in vain that day for traces of the deceased, Bhageeruth; but when renewed the next day resulted in the discovery in the first instance, of part of his clothing, and, at a later hour, of his corpse, which had then risen to the surface of the water. There was a serious wound apparent on the head, and the skull was fractured. The witness alluded to the previous disagreement between the prisoners and his brother, and attributed the death of the latter to a revengeful feeling excited by his having struck the prisoner, Sheikh Poyzarie (No. 1.)

The second witness to the fact, Dagun Bhoomali, deposed that he was occupied with the witnesses, Sheikh Neamut (No. 3,) Rubeeollah (No. 4,) and Jumeer (No. 5,) in catching fish near the spot where the deceased, Bhageeruth, and his brother, Gopal Kyburt, were engaged in reaping their paddy and conveying it to the boat. He saw the prisoner, Sheikh Poyzarie (No. 1,) approach and push the *dinglee* afloat, the prisoners Pandub (No. 2,) Hazari (No. 3,) Bukshee (No. 4,) and Soynuddin (No. 5, calendar No. 2,) standing at hand. In

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Case of

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others.

the prisoner, Pandub's hand he noticed a *lattee*. The deceased, Bhageeruth, and his brother now leapt into the river, but the latter returning to dry land, pursued by the prisoners, Bukshee (No. 4,) and Soynuddin (No. 5, calendar No. 2.) The remaining prisoners Sheikh Poyzarie (No. 1,) Pandub (No. 2,) and Hazari (No. 3,) got into the boat and commenced a violent assault on the deceased, Bhageeruth, Sheikh Poyzarie with the *luggee*, Pandub with a *lattee*, and Hazari with the paddle. The witness became alarmed and hastened from the spot. The next day he heard that Bhageeruth Kyburt was dead.

The witness, Sheikh Neamut (No. 3,) explained his presence at the scene of the occurrence in the manner the previous witness had done. He deposed to the arrival of the prisoners, the alarm of the deceased, Bhageeruth Kyburt and his brother, their taking refuge in the river, into which the prisoners, Sheikh Poyzarie, Pandub and Hazari followed them in the boat and assaulted Bhageeruth Kyburt in the manner described, while the prisoners, Bukshee and Soynuddin, pursued the witness, Gopal Kyburt, who had returned to dry land. The witness saw the deceased sink beneath the surface of the river under the blows inflicted on him, and then proceeded home.

Kubeeoollah, the fourth witness to the fact, corroborated the evidence of the two proceeding witnesses, in whose company he was catching fish. He described the assault as taking place precisely as they had described it. The prisoners, Sheikh Poyzarie with the *luggee*, Pandub with a *lattee*, and Hazari with the paddle, followed the deceased Bhageeruth, who had leapt into the river, and assaulted him from his own boat until he sunk beneath the surface of the water. The remaining prisoners, Bukshee (No. 4,) and Soynuddin (No. 5, calendar No. 2,) pursued the witness, Gopal Kyburt, who had returned to land, and was making his escape.

The witness, Jumeer (No. 5,) proving to be totally ignorant of the obligation of a solemn affirmation, was not examined.

The witness, Rajkisto Soor (No. 6,) was proceeding with a boat-load of earthen pots, when he saw two persons leap from the bank into the river. Five others got on board a boat and followed these two. One of the two returned to land, and two of the five jumping from the boat pursued him. The three still on board the boat commenced assaulting the remaining fugitive still in the river with a *luggee* and a paddle, but the witness's boat having now floated round an angle of the river, he saw no more. The next day he learnt that the person thus assaulted was the deceased, Bhageeruth, and that his death had resulted from the violence used towards him.

The above constitutes the evidence of the witnesses to the fact. In aid of it the calendar supplied that of several others, who had heard of the occurrence, were present when part of the deceased Bhageeruth's clothing was first found, and, shortly after, his corpse, and heard the prisoners confess their guilt to the headmen of the village, and entreat that the affair might be hushed up.

The body arrived in so swollen and decomposed a state, that an autopsy proved impracticable. The inquest held on the body in the mofussil, shewed that a dreadful wound had been inflicted on the head, and that the skull was fractured.

When apprehended in the mofussil, the prisoner, Sheikh Poyzarie (No. 1,) confessed to the following effect. His cattle having strayed on the deceased Bhageeruth's cultivation, a quarrel ensued, and the deceased struck the prisoner on the left arm. He determined to retaliate on the first opportunity that offered, and availing himself of the deceased and his brother, Gopal Kyburt, coming to cut paddy, proceeded with Pandub (prisoner No. 2,) to the river side, when, with the *luggee* and oar, they assaulted the deceased by striking him on the head, in consequence of which he fell into the water.

The prisoner, Pandub (No. 2,) made a very similar confession.

The prisoner, Hazari (No. 3,) referred to the trespass and to the assault on his brothers, and to the determination arrived at by them all of taking their revenge, when an opportunity presented itself. The prisoner, Poyzarie, came to him on the morning of the occurrence and told him that the deceased and his brother were in the vicinity cutting grain. Taking a *lattee*, the prisoner accompanied by Sheikh Poyzarie and the remaining prisoners, Pandub (No. 2,) Bukshee (No. 4,) and Soynuddin (No. 5, calendar No. 2,) set forth without delay and the prisoners, Pandub and Bukshee, snatching up the *luggee* and paddle, commenced assaulting the deceased, while standing up to his neck in the river, in which he sank under their violence. The prisoner stated that he did not join in the assault, but standing on the bank, desired his brothers to desist.

The prisoner, Bukshee (No. 4,) is the servant of the other prisoners, who informed him, according to his confession at the *thannah*, of their intention to assault the deceased, and induced him to join them in effecting their purpose. He stated that he stood on the river side with the prisoner, Soynuddin (No. 5, calendar No. 2,) while the prisoners, Sheikh Poyzarie (No. 1,) Pandub (No. 2,) and Hazari (No. 3,) assaulted the deceased, who had taken refuge up to his neck in the water, in which he shortly sank, the first with the *luggee*,

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Case of
SHEIKH POY-
ZARIE and
others.

92 CASES IN THE NIZAMUT ADAWLUT.

1853. the second with a *lattee*, and the third with the paddle of the boat.

July 25. The prisoner, Soynuddin (No. 5, calendar No. 2,) made no confession, when apprehended by the police.

Case of
SHEIKH POY-
ZARIE and
others. Before the magistrate, the prisoner, Sheikh Poyzaric (No. 1,) made a confession, similar in all material respects to that before made by him in the mosfussil.

Such also was the case in the instances of the prisoners, Pandub (No. 2,) Hazari (No. 3,) and Bukshee (No. 4,) who made before the magistrate the same admissions they had made to the *darogah*, and described the occurrence nearly in the same terms.

The prisoner, Soynuddin (No. 5, calendar No. 2,) regarding whose state of mind, I shall shortly have occasion to make some remarks, stated before the magistrate, that he had not taken any part in the assault, declared that he knew neither his father's name, that of the *pergunnah* in which he lived, nor his age, and that he was mad.

The prisoners, who had pleaded not guilty before the sessions court, made the following defence.

The prisoner, Sheikh Poyzaric (No. 1,) declared that he had no intention, when striking the deceased, of killing him.

The prisoner, Pandub (No. 2,) declared that he had been induced by the very witnesses for the prosecution to assault the deceased, and subsequently to confess.

The prisoner, Hazari (No. 3,) denied having assaulted the deceased, or having been present when he was, as the prisoner had heard, assaulted.

The prisoner, Bukshee (No. 4,) stated that while occupied with the prisoners, Hazari and Soynuddin, in weeding a field, the prisoner, Sheikh Poyzaric, who was with the prisoner, Pandub, on the river side, called to his brother, Hazari, to go to him. Hazari went first, and the prisoner and Soynuddin were following, when they met Poyzaric and Pandub returning, who told them that they had struck the deceased twice.

The prisoner, Soynuddin (No. 5, calendar No. 2,) stated that he had not seen any assault committed on the deceased.

The prisoner, Hazari (No. 3,) called three witnesses. The first deposing that he knew of nothing advantageous to the prisoner, the latter declined having his remaining witnesses examined.

The Mahomedan law officer declared the prisoners, Sheikh Poyzaric (No. 1,) Pandub (No. 2,) and Hazari (No. 3,) guilty of the wilful murder of Bhageeruth Kyburt, son of the prosecutor and liable to *seerasut* and *acoobut*. He found the prisoner, Bukshee (No. 4,) guilty of aiding and abetting in the said murder and similarly liable. The prisoner, Soynud-

din (No. 5, calendar No. 2,) he acquitted on the ground of deficiency of proof against him.

The case, as developed by the confessions of the prisoners and by the evidence for the prosecution, in my opinion calls for the conviction of all the prisoners, for while I concur with the Mahomedan law officer in his finding against the prisoners, Sheikh Poyzarie, Pandub, Hazari and Bukshee, Nos. 1, 2, 3 and 4, I differ from him with regard to the prisoner, Soynud-din (No. 5, calendar No. 2,) whom I would also convict of aiding and abetting in the murder.

The violence of which I conceive the prisoners to be convicted was premeditated, and marked by great cruelty. They had been for some days on the watch for an opportunity to revenge themselves on the deceased, and when it arrived, they fractured his skull with a heavy paddle and still heavier bamboo *luggee*, while he was standing helpless and unresisting in the deep water, to which he fled in anticipation of their purpose. The prisoner, Sheikh Poyzarie, states in his defence that he did not contemplate murder. It certainly does not appear that, with the exception of Pandub, the prisoners came to the spot provided with any instruments of violence, for the paddle and *luggee* were snatched from the boat, and this consideration added to the fact that the deceased had struck one if not two of the prisoners some days before, and was thus far the aggressor, induces me to recommend that the prisoners, Sheikh Poyzarie (No. 1,) Pandub (No. 2,) and Hazari (No. 3,) should, in lieu of being capitally sentenced, be imprisoned for life in transportation with labor in irons.

The case assumes a very mitigated form as regards the prisoners, Bukshee (No. 4,) and Soynuddin (No. 5, calendar No. 2.) It is true that they accompanied the other prisoners to assault the deceased, but they do not appear to have done more than pursue and perhaps inflict a blow or two on the witness, Gopal Kyburt. Bukshee is a servant of the principal prisoners, and, it is fair to presume, acted in a degree under the influence of his masters. Soynuddin again is certainly a person of low intellect, although not in my judgment insane or an unconscious instrument in the hands of his brother. The civil assistant surgeon's opinion regarding the latter prisoner, though not very clearly expressed, is, however, generally in favor of his being out of his mind. Mr. Skinner describes him of being of weak intellect and requiring care, which latter expression he afterwards explains by saying that the prisoner should be detained in a lunatic asylum, in order that he should not have an opportunity of committing crime. Mr. Skinner goes on to depose that the prisoner, when committing the offence with which he is charged, was aware that he was com-

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mitting a crime, but not that it rendered him amenable to the laws, and, in reply to a further question, that he believed the prisoner to be aware that he was committing murder, and that murder was a crime he had no right to commit. If such were the case, he is, in my opinion, responsible in the eyes of the law for the share he took in the outrage. It seems that when first received into the jail, the prisoner assumed to be deaf and dumb, but subsequently relinquished this attempt at deception and answered the questions put to him by the civil assistant surgeon. I think much suspicion may justly attach to an appearance of insanity, supported by an act of cunning of this description, and that while the prisoner's ill-formed head and cunning look may constitute fair *prima facie* grounds for doubting his sanity, the case was one that called for closer and longer enquiry than visits on two or three days could admit of, especially as his fellow-prisoners (witnesses Nos. 43 and 44, calendar No. 2,) depose that he spoke freely and sensibly when neither the magistrate nor civil assistant surgeon were present. My opinion, however, is, that although the prisoner Soynuddin's intellect is of a low order, he was then and is now perfectly capable of forming a correct opinion of the nature of the act he was engaged in. Should the court be of opinion that the prisoners, Buxshee (No. 4,) and Soynuddin (No. 5, calendar No. 2,) were aiding and abetting in the outrage on the deceased, Bhageeruth Kyburt, I would recommend, with reference to the view I have taken of the limited extent to which they shared in it, that they should be imprisoned for one year, and pay within a reasonable period a fine of 25 Rs. each, or in default of doing so, that labor be added to imprisonment. Should the court consider the prisoner, Soynuddin, guilty as above, but entertain doubt as to his state of mind, he might be remitted to the charge of the civil assistant surgeon for further and closer enquiry as to his sanity.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and H. T. Raikes.) The three first prisoners, Sheikh Poyzarie, Pandub and Hazari, are clearly guilty as principals in the assault on the deceased, and as the act was deliberate and lawless, and the violence inflicted was such as to fracture the skull of the deceased, the conviction must be of murder. We convict these prisoners accordingly, and sentence them, as recommended by the sessions judge, to transportation for life.

The other two prisoners, Buxshee and Soynuddin, were present close to the place where the attack was being made on the deceased, and they had accompanied the other three to aid them in their general unlawful purpose of violently retaliating

the blows, which two of them had received from him. They were, undoubtedly, aiding and abetting in the assault which terminated in his death, and they must be convicted as accomplices in the murder. But they took no active part, and they may probably have been quite unprepared for the fatal result. It will be enough, we think, as regards these prisoners, in convicting them of accompliceship in the murder, to sentence them to imprisonment for two years with labor and irons.

The magistrate and the civil assistant surgeon will carefully watch the state of mind of the prisoner, Soynuddin, while undergoing this sentence, and take any measures in regard to him, which may be found necessary upon the result of this observation.

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Case of
SHEIKH POY-
ZARIE and
others.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

ATOO SHEIKH (No. 5,) ASMUT SHEIKH (No. 6,) SITOOJAH FAQUEER (No. 7,) KHOODEE SHEIKH (No. 8,) BHEEKOO CHOWKEEDAR (No. 9,) MUDDOO SHEIKH (No. 10,) BEDESEE SHEIKH (No. 11,) NU-BEE SHEIKH (No. 12,) SHADOO SHEIKH (No. 13,) NUSHA SHEIKH (No. 14,) NEAMUT SHEIKH (No. 15,) AND SHOBHANEE KHAN (No. 16.)

Rajshahye.

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Case of
ATOO SHEIKH
and others.

CRIME CHARGED.—1st count, dacoity in the house of Prankisto Das Sircar; 2nd count, knowingly receiving and being in possession of property obtained by dacoity; 3rd count, accomplices to the dacoity; 4th count, privity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. H. Stainforth, officiating commissioner of Rajshahye with powers of a sessions judge, on the 30th May, 1853.

Remarks by the officiating commissioner.—A band of dacoits entered the house of Prankisto Sircar, who was absent from home, knocked down his servant Ameer Sheikh, made a light, and plundered the house of property to the value of Rupees 246-3-5.

Prisoner convicted of dacoity and sentenced to fourteen years' imprisonment by the sessions judge. In appeal, sentence on all the prisoners, except those who were chowkidars reduced

The servant Ameer recognized Atoo, Uzmut and Shoojah, to ten years' imprisonment. and confessions led to the apprehension of the other prisoners.

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Atoo, Uzmut, Shoojah, Khoodee, Bheekoo, Muddoo, Bedesee and Nubee are proved to have confessed, before the police and magistrate, having joined in the dacoity, and to have given up part of the plundered property.

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Atoo Sheikh
and others.

Some of them alleged maltreatment by the police, and called witnesses who did not support the plea.

Others said that Mooktyar, an old convict, had pointed out the property, but he merely appears to have aided as a *goinda* in the case, and there were other pleas of less importance which were not proved.

Shadoo, Nusha, Neamut, Shobhanee are proved to have confessed before the police, but denied guilt before the magistrate and this court. They also pleaded maltreatment by the police, and that Mooktyar and Haroo, two old convicts, shewed the plundered property, which was not in their houses; but their witnesses stated nothing in exculpation of them, and they are named as accomplices in the confessions of other prisoners.

Holding the prisoners' guilty of dacoity upon their own confessions, and from the circumstance of their being proved to have pointed out part of the stolen property, they are convicted and sentenced each to fourteen years' imprisonment with labor in irons.

The *darogah* has been rewarded with 100 Rupees, for his efficient services in the case.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The whole of the confessions are duly attested and found to have been voluntarily given, and the finding of part of the plundered property with each of the prisoners is established upon these grounds, the conviction is good. I think it is clearly necessary however in awarding punishment to draw a distinction between the majority of the prisoners, who are common *ryots*, and Asmut Sheikh and Bheekoo who belong to the village watch, and who betrayed their trust in not only permitting, but taking part in the dacoity. Leaving the sentence untouched as regards these two men, I reduce it in the case of the others from fourteen to ten years' imprisonment, which would seem to be sufficiently severe, as the dacoity was not attended with any circumstances of aggravation.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

SOBUN MULLAH (No. 2,) BANOO SHEIKH (No. 3,) AND NAZIR MULLAH (No. 4.)

Rajshahye.

CRIME CHARGED.—Prisoners Nos. 2 and 3, 1st count, dacoity; 2nd count, being accomplices in the above dacoity; 3rd count, privity. Prisoner No. 4, 1st count, dacoity; 2nd count, being accomplices in the above dacoity; 3rd count, privity; 4th count, knowingly being in possession of property obtained by dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. H. Stainforth, officiating commissioner of Rajshahye with powers of a sessions judge, on the 3rd May, 1853.

Remarks by the officiating commissioner.—Dacoits, about thirty, entered the house of Sreenibas at midnight, dragged him from beneath the bed under which he had crept, struck him, and plundered his house of property, valued at Rupees 3,641-2.

Sreenibas recognized his discharged servant, Sobun, as one of the dacoits, and Sobun told the police that he would say what he had to say before the magistrate. Banoo was apprehended on the statement of a Chowkeedar, that he was absent from home on the night of the dacoity, and Nazir Mullah was named in the confession, which Sobun made before the magistrate.

Sobun is punished on the recognition of Sreenibas, and his confession before the magistrate, and the other prisoners on their confessions before the police and magistrate.

The amount of the property taken was great and the value of that recovered small; only a few of the dacoits have been arrested, and the crime is common in the district. Under these circumstances, the prisoners have been sentenced to fourteen years' imprisonment with labor in irons in banishment from the district.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The confessions, which are duly attested, are clear and distinct as to participation in a dacoity, committed on a particular date, in the house of the prosecutor, Sreenibas Sircar. The conviction is good upon these confessions, and I see no reason to interfere with the sentence.

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I remark that in the calendar, the prisoners are merely charged with dacoity, and two other counts having reference to dacoity. This is not sufficient. The *roobacarree* of commitment gives the particulars, and these are again stated in the opening proceeding on the trial, so that the prisoners were sufficiently aware of the particular dacoity in regard to which they were called upon to plead. The magistrate should be careful however in future to make the charge specific, as entered in the English and Bengalee calendars.

PRESENT:

J. R. COLVIN, Esq., Judge.
H. T. RAIKES, Esq., Officiating Judge.

Tenasserim
Provinces.

GOVERNMENT,

versus

HUSSAIN SYRANG.

1853.

CRIME CHARGED.—Wilful murder.

Case of
HUSSAIN SYRANG.

Committing Officer.—Major H. Bower, magistrate of Moulmein.

Tried before Lieutenant-Colonel A. Bogle, commissioner of Tenasserim and Martaban provinces, on the 28th June, 1853.

Remarks by the commissioner.—That Hussain residing in Moulmein, Syrang, on the 2nd of June, 1853, between the hours of 10 and 11 A. M. did feloniously, wilfully and of his malice afore thought, make an assault upon Golum Cawder, a Lascar also residing in Moulmein, and that the said Hussain with a certain fixed handle-knife, having a sharp pointed blade, six and half inches long by one inch in breadth, which he held in his hand, did inflict a mortal wound betwecn the left breast and arm-pit of the said Golum Cawder, of which mortal wound the said Golum Cawder did from the 2nd day of June, to the 9th day of the same month languish, and languishing did live, and on which 9th day of June about $\frac{1}{2}$ past 4 p. m. the said Golum Cawder, of the said mortal wound, died.

Prisoner pleads not guilty.

Jurors.

J. Pascal, J. Simpson, Duly chosen by lot and not challenged by the prisoner, when asked if he has objections
be supposed to be conscious of his acts. Syed Saib, to make to any of the five, make solemn affirmation.
Moung Hurong,
Moung Kyaban.

1st Witness for the prosecution.—John Moorhouse, carpenter, aged 34 years, son of John and Mary, duly sworn, states

that on the morning of the 2nd June, between the hours of 10 and 11 A. M. I was at Adam Sah's house about a carriage; there were present Adam Sah and one Peechay a native, and another whose name I do not know; we were looking at Adam Sah painting a carriage; we heard a great noise outside; we ran to see what it was, and saw the prisoner turn round the corner of Mrs. Autram's compound with a knife in his hand which I saw him fling into Mrs. Autram's ground; we ran after him; he ran away, but we caught him just in front of Adam Sah's house; we saw the deceased standing wounded; he was holding his right hand against his left armpit; he was bleeding excessively; he was speaking to some one in Hindustanee; did not understand what he said, but the others who heard him, said that he had stated that the prisoner had stabbed him; in consequence of this, I and others pursued and caught the prisoner; he was covered with blood, and it wet my hand; he tried all he could to escape, he was drunk, he said, why do you catch me. I could recognize the knife if I saw it again. A peon picked the knife up in Mrs. Autram's ground; after the deceased was stabbed, he went to his house distant 100 yards, and there fell down; in about quarter of an hour, the constable came and sent him to the hospital and there he died about a week after. When I ran out of Adam Sah's house, I saw no one in the street but prisoner and deceased; Peechay first called out, one man has stabbed another, and that made me run out; the prisoner was not so drunk as not to know that he had stabbed deceased; he struggled hard to effect his escape, and we had to use much force; he leaped over a planked paling into Mr. Hutton's compound and ran through that into another man's, where we secured him. The blood on prisoner's clothes was quite fresh and wet. The knife before the court is the one picked up in Mrs. Autram's compound.

Prisoner and jury have no questions to ask.

2nd Witness for prosecution.—Peechay, carriage owner, ago 25 years, son of Bassarowathen and Fateemah, on solemn affirmation states, that about 10 or 11 A. M. of the 2nd of this month, I was at Adam Sah's house about my carriage which he was painting, while I was there I heard a call from the street, and on looking out I saw a man (lad) standing with his right hand against his left armpit from whence blood was flowing, and another man, the prisoner now before me, with a knife in his hand; the lad called out, he has stabbed me with a knife, "chooree sa marra," I was afraid and ran inside the house again, I did not see what prisoner did with the knife, no one else was near the deceased but the prisoner. Prisoner and deceased were only about six feet apart; I did not assist in

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catching the prisoner, others pursued him; the knife before the court is the one prisoner had in his hand; I was not about fifteen feet from him when I saw him, the knife was bloody; I am quite sure no one else was near deceased.

Prisoner and jury have no questions.

3rd Witness for prosecution.—Adam Sahib, coach-builder, aged 27 years, son of Cutbamah and Muniambee, makes solemn affirmation and states, I know the prisoner Hussain Syrang; on the 2nd instant, I was painting a carriage. I heard some one call out "*chooree sa marra*," stabbed with a knife; Peechay 2nd witness went out to see, also 1st witness Moorhouse; I and another followed and saw the deceased standing close to my house with his right hand at his left armpit from whence blood was running fast; Moorhouse and Peechay said, a man with a knife had run round the corner; I then ran out by the back of my house and pursued the prisoner, who had run through a native's ground into Mr. Hutton's compound and thence into another man's ground where we caught him. Eusoph seized him first; I was close by; I saw blood on his clothes and hand; he tried to escape but could not. A peon brought the knife from Mrs. Autram's compound; I can recognize it; the one before the court is it; I saw no one else on the street besides the deceased, and the people who rushed out of my house on hearing the cry; the wounded man was taken to hospital and I heard five or six days after, died; he was a Lascar; when the knife was found it was bloody. Did not hear the wounded man say who had struck him. Prisoner was made over to the police; never saw him before that day; he was not drunk; I now recognize him at the bar.

Prisoner and jury have no questions.

4th Witness for prosecution.—John Andrew Reynolds, civil surgeon, Moulinein, son of John and Charlotte, age 39, duly sworn, states, I remember a Lascar named Golam Cawder being brought to hospital on the 2nd June, about noon, having a wound on the left chest, inflicted by a knife or some sharp weapon; there was great hemorrhage and he died on the 7th; the bleeding was stopped with difficulty; I consider that the wound was the cause of death, although mortification of the arm was the immediate cause, I suppose brought on by the injury inflicted by the wound; the knife before the court is such as the wound was inflicted, the deceased was a young and strong looking man, and had no other complaint but his wound.

Prisoner and jury have no questions.

5th Witness for prosecution.—Romese Syrang, aged 40, son of Domlut and Rahabee, makes solemn affirmation and states, I know the prisoner; I also knew Golam Cawder, deceased; I last saw him in the General Hospital, about a month ago; one

morning about 10 A. M. I was going past Adam Sahib's house, and near Ahmed Ally's house, I saw deceased lying on the road stabbed on the left side; I and some others took him to the hospital; the prisoner was then in the hands of the police; I was present when Major Bower came to hospital and asked Golam Cawder who had stabbed him; he said that the Syrang Hussain; the prisoner, had stabbed him with a knife; I was witness to the deposition; the deceased was quite sensible then; he did not die till nine days after I heard; the knife was shewn to him and he recognized it; the one before the court is the one he recognized; I now swear to it. Both prisoner and deceased lived in one house; deceased was a Lascar to the same ship with prisoner; they had quarrelled about pay.

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Prisoner and jury have no questions.

6th Witness for prosecution.—Appanah police peon 4th division, son of Soobanah and Bapanah, makes solemn affirmation and states, I know the prisoner Hussain Syrang; on the 2nd instant, I was passing Adam Sahib's house, about noon, when I heard a disturbance; inquired the cause, and learnt that one man had stabbed another; saw the wounded man, he said the Syrang had stabbed him, and ran away; I then went in pursuit; the prisoner was captured and made over to the other peons; a man said he had seen the prisoner throw the knife into a garden; I went to search for it, and found it inside a bamboo fence; cannot remember the name of the proprietor, but it is a stout lady, the knife was dry but red with blood; the knife before the court is the one I picked up; I gave it to the constable, by whom it was produced in court; the prisoner was a little drunk when he was caught.

Prisoner and jury have no questions.

7th Witness for prosecution.—P. S. Godhino, musician, age 24 years, son of Samader and Caroline, duly sworn, states, I remember a man being stabbed near Adam Sahib's; I saw the prisoner running away, and saw him throw something into Mrs. Autram's compound and told a peon, Appanah last witness, to go and fetch it, he did so, and brought a knife covered with blood; I swear to the knife before the court being the one; the wounded man was lying bleeding on the road close by, and the prisoner had just that instant been caught. The people said, the prisoner had stabbed the wounded man, but I did not see it myself.

Prisoner and jury have no questions.

8th Witness for prosecution.—Manjee Seamah Tindal, aged 24 years, son of Seamah and Fatimah, makes solemn affirmation and states, I belonged to the "Eliza." The prisoner was Syrang of that ship; Golam Cawder deceased was a Lascar; on the 2nd instant, I saw the deceased being taken to the General

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Hospital in a carriage ; I went with him ; the doctor asked what was the matter ; the deceased said Hussain Syrang had stabbed him ; I was present when the magistrate Major Bower

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went to the hospital and took the deposition of Golam Cawder ; I was a witness to it as was also Romeese Syrang, the deceased said that the prisoner had stabbed him with a knife ; I recognize the knife before the court ; it is the prisoner's knife ; I have often seen him using it on board the ship "Eliza;" I sailed in company with prisoner for nine months ; I know the knife well ; Golam Cawder told me the prisoner Hussain Syrang had stabbed him, about nine days before his death, he was then perfectly in his senses ; the prisoner sometimes drinks and quarrels and strikes people, I know of no quarrel between the deceased and the prisoner.

The prisoner and jury having no questions to put, witness withdraws.

Prosecution is here closed.

Prisoner's defence.—The prisoner Hussain Syrang states that he has nothing to say ; that the spirits of Moulmein have ruined him ; that he knows nothing about the matter ; that he was drunk and cannot say what he did ; that the deceased brought spirits to him, and he got intoxicated with the same.

The defence is here closed.

Verdict of the jury.—Guilty, but recommend the prisoner to mercy as he was intoxicated, and did not know what he was doing.

Opinion and sentence of the court.—The court concurs in the finding, and observes that in the absence of all proof of anything having occurred between the parties of an irritating character, such as might induce the prisoner in a moment of anger to lift his hand against deceased, it must find the prisoner guilty of wilful murder, and as there is no circumstance in the case of an extenuating nature, the court is under the necessity of regarding the prisoner Hussain, son of Aboo, as liable to the extreme penalty of the law, and recommending that he be executed in the usual manner.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin, and H. T. Raikes.) Mr. H. T. Raikes.—The provocation appears to have been very slight, but the prisoner had been drinking ; this may have had some effect on a disposition naturally ferocious and have rendered him more prompt and reckless in acting on his evil impulses. It is, however, impossible to suppose that intoxication had deprived him of all control over his actions, as he himself alleges. Such a belief is quite incompatible with the attempt he immediately made to escape, and to get rid of the knife with which he had just committed the crime.

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The weapon itself, and the deadly effect with which it was used, sufficiently indicate the malice of the slayer, and the prisoner should, in my opinion, be held responsible for the full consequences of his acts.

I therefore convict him of wilful murder, and, seeing no grounds for the recommendation to mercy, tendered in his behalf by the jury, I would sentence him to suffer death.

Mr. J. R. Colvin.—The guilt of the prisoner is beyond doubt.

The commissioner has not given, as is usual, a general statement in his report of the circumstances of the case. Nor has he there noticed, as ought certainly to have been done, that the jurors, in finding the prisoner guilty, recommended him to mercy "as he was intoxicated and did not know what he was doing."

Intoxication, voluntarily caused, cannot of course excuse crime. But allowance might still be made, in awarding punishment, for a loss of reason, so great, as that a person could scarcely be supposed to be conscious of his acts. Such is not, however, the character of the present case. It is plain upon the evidence, and especially on that of John Moorhouse, that the prisoner, though excited or disturbed by drinking at the time of inflicting the mortal wound, was quite aware of the nature and consequences of his act. He threw away the knife, and struggled hard to escape, so that much force was required to secure him.

I concur with Mr. Raikes in thinking that there are no adequate grounds for remitting the just sentence for so wanton a sacrifice of life and in sentencing the prisoner capitally.

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Case of

HUSSAIN SY-
RANG.

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July 28.

Case of
SHEEBRAM
PANDE and
another.

GOVERNMENT,

versus

SHEEBRAM PANDE (No. 6,) AND MUNNEERAM
PANDE (No. 7.)

CRIME CHARGED.—1st count, burglary at the shop of the prosecutor and theft therefrom of property valued at Rs. 20; 2nd count, receipt and possession of property stolen from prosecutor to the value of Rs. 7-8-10, with knowledge that such property was acquired by theft.

Prisoners charged with burglary acquitted, the evidence to the identification of the property being insufficient.

1853. Committing Officer.—Mr. G. C. Fletcher, joint-magistrate of Cuttack.

July 28. Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 18th June, 1853.

Case of Sheebaram Pande and another.

Remarks by the sessions judge.—The following are the particulars of this case. On the 23rd April last during the search of the house of the prisoners who are father and son, on the suspicion of Guness Sein, the prosecutor in case No. 1, calendar of the joint-magistrate of Cuttack for the month of May, (the same being case No. 2, of statement, No. 6, of prisoners punished by the sessions judge without reference for the month of June,) a portion of the property consisting of a quantity of *choorees*, a description of earthen bracelets, valued at Rs. 7-8-10, belonging to Juggurnath Doobee, whose house was burglariously broken into and robbed on the night of the 21st December, 1852, was found buried under ground inside the house, (along with property valued upwards of one thousand Rs. which were stolen from the house of the above named Guness Sein,) and the said *choorees* having been proved to be the property of Juggurnath Doobee, the prisoners were committed in the present case, which might under ordinary circumstances have been disposed of by the joint-magistrate, in consequence of their having been previously committed on the 9th idem, on a charge of burglary and theft of property valued at Rs. 1800, from the house of Guness Sein.

Sheebaram Pande, prisoner No. 1, pleaded not guilty, and claimed the *choorees* as his own property.

Munneeram Pande, prisoner No. 2, also pleaded not guilty, but stated that he did not know to whom the *choorees* belonged.

Witnesses Nos. 1 and 2, deposed to the occurrence of the burglary, and likewise to the identity of the property along with witnesses Nos. 6 and 7. And witnesses Nos. 3, 4 and 5, deposed to the property having been found buried in the house of the prisoners.

The law officer mistrusting the evidence to the identification of the *choorees*, in consequence of certain witnesses adduced by the prisoner Sheebaram Pande having deposed that he was in the habit of selling articles of a similar description, acquits the prisoners. But from this verdict I dissent; for, though the *choorees* or bracelets, 2,560 in number, are not severally or perhaps even collectively capable of direct or positive identification, the fact of their having been found buried along with other stolen property inside the house of the prisoners, and the prisoner No. 1, the father of the other prisoner, having disclaimed all knowledge as to whom they belonged, indicate that they were stolen property, and the circumstances

of the case warrant the inference that they were stolen from the prosecutor's house; I would therefore convict the prisoners on violent presumption of having in their possession property stolen from the house of Juggurnath Doojee, knowing it to have been stolen, and sentence them with reference to their having been sentenced to ten years' imprisonment each, in the case of Guness Sein, to six months' imprisonment with labor in irons from the date of the expiration of the said sentence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and H. T. Raikes.) Mr. H. T. Raikes.—A burglary had been committed in the prosecutor's house on the night of the 21st December, and four baskets of *choorees*, (earthen bracelets) were stolen. Nothing then transpired to throw suspicion on the prisoners; but on searching their house on the 23rd of April, in quest of property taken in another burglary, two baskets of *choorees* were found concealed in the earthen floor of one of the houses; the *darogah's* report with the particulars of this discovery has not been put up with the *nuthee*, it has probably been filed in the other burglary case. The prisoner Sheebram however does not deny the fact, but claims the property as his own, while his father denies all knowledge of it.

The only question is, the identity of the property; there is no doubt it has been found under very suspicious circumstances, but it seems to me impossible that articles to the number of 2,500 of a description so common as these must be, and which could only have been seen by the witnesses for the prosecution when jumbled together in the baskets in which they were kept, can well be susceptible of identification. There is nothing in the evidence of the witnesses themselves to overcome the general impression of a difficulty of the nature, and the only circumstances which tend to a belief that their statements *may* be true, are the concealment of the property, and the contradictory nature of the defence set up by the two prisoners. Sheebram has never been questioned as to why these *choorees* were buried under ground, if his own, and, as remarked above, detailed particulars on this point are wanting, while his witnesses speak to his having dealt in these ornaments for more than a year. On the whole, I think there is room for a reasonable doubt in favor of the prisoners, and that they should have the benefit of it, and I would therefore acquit them, I observe the sessions judge has sentenced them to ten years' imprisonment in another case.

Mr. J. R. Colvin.—I concur generally in the above remarks.

The evidence is not sufficient for conviction, and I join in acquitting the prisoners upon the charges in this trial.

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July 28.
Case of
SHEEBRAM
PANDE and
another.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*RAMDHUN MALEE AND GOVERNMENT,
*versus*Nuddea. KHODI SHEIKH (No. 1,) ROI ALIAS ROHIM SHEIKH
(No. 7,) AND OOJEER SHEIKH (No. 11.)

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July 29.

Case of
KHODI
SHEIKH and
others.

CRIME CHARGED.—1st count, committing a dacoity attended with personal injury of Nepal Ghose, (witness No. 2,) on the house of the prosecutor Ramdhun Malee in which property valued at Co.'s Rs. 63-6, was plundered ; 2nd count, being accomplices in the said dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. F. Montressor, magistrate of

Three pri-
soners convict-
ed of dacoity ontheir own con-
fessions, and
sentenced to
imprisonment

Remarks by the officiating additional sessions judge.—The prisoners were committed with eight others, included in my twelve years' statement No. 8, for the current month for dacoity, and pleaded not guilty. Prosecutor only speaks to the occurrence in banishment. and says he fled the moment the dacoits made their appearance

Appeal re-
jected.and alarmed the neighbourhood. The witnesses 1, 2, 3, 4, appear to have repaired at once to the prosecutor's house, and supported by each other confronted the dacoits. Indeed the former was on the premises at the time of the attack and seized on by the dacoits, some of whom lay on him to prevent his moving and applied a burning torch to his face, on his attempting to look round to observe what was passing. He subsequently effected his escape and joined in the encounter with the dacoits. Several of the gang were identified by these four persons, but among the prisoners, Khodi Sheikh only. The general recognition is said to have taken place partly during the conflict and partly at the time of departure from the premises. A pursuit also appears to have been made, but without effect as none of the dacoits were apprehended, though induced to throw away some of the plundered property they were carrying off. All the prisoners confessed both before the police and the magistrate, though I was obliged to reject the mofussil confession of the prisoner Khodi on account of defect of attestation,—two of the three subscribing witnesses being unable to speak to the date on which it was given, and the third to identify the party who made it. His *foujdar* confession defers in some respects from that given before the police, but its detail is quite sufficient to prove the prisoner's

complicity in the dacoity, supported as it is by the confession of the other prisoners, and the fact of his having been recognized at the time. The confessions of the other prisoners are consistent throughout and credibly verified. The prisoners' plea is *alibi*, but their witnesses utterly fail to establish it. I have no doubt of the guilt of the prisoners, but am inclined to regard them rather as following in the wake of others in this affair, than taking a lead.

Sentence passed by the lower court. Imprisonment with labor in irons in banishment for twelve (12) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoners have been convicted on their own confessions. I see no reason to interfere with the sentence passed upon them.

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July 29.
Case of
KHODI
SHEIKH and
others.

PRESENT:

SIR R. BARLOW, Bart., AND J. DUNBAR, Esq., Judges.

GOVERNMENT AND RAMKANTH KUPALLY,

versus

KOMUL KUPALLY (No. 8,) SURROOP KUPALLY (No. 9,) AND SONARAM ALIAS SONATUN KUPALLY (No. 10.)

Dacca.

CRIME CHARGED.—Prisoner No. 8, with the murder of his wife Musst. Umerto daughter of the prosecutor. Prisoner No. 9, with being accessory before and after the fact. Prisoner No. 10, with being accessory after the fact.

Committing Officer.—Syud Zainuddeen Hossain, deputy magistrate of Manickgunge, *zillah* Dacca.

Tried before Mr. C. T. Davidson, officiating commissioner with powers of sessions judge at Dacca, on the 13th June, 1853.

Remarks by the officiating commissioner with powers of sessions judge.—The prisoner No. 8, Komul Kupally, is charged with the murder of his wife Musst. Umerto daughter of the prosecutor,—Surroop Kupally (No. 9,) with being accessory before and after the fact,—and Sonaram Kupally (No. 10,) with being accessory after the fact.

The case was first inquired into by the police *darogah*, who reported that in consequence of quarrels with her co-wife the deceased had hung herself, and he sent in the prisoners on a charge of concealing an unnatural death. The post-mortem examination, conducted by the sub-assistant surgeon, shewed

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Case of
KOMUL
KUPALLY and
others.

One of the prisoners was convicted on strong circumstantial evidence, of the murder of his wife, and sentenced, under the circumstances of the case, to imprisonment for life in transportation.

1853. that the case was not one of suicide, and the deputy magistrate ordered a re-enquiry, and deputed his *nazir* to make it.

July 27. From his report it would appear that deceased's husband, Komul Kupally, beat her on the 1st of March, in consequence of her quarrelling with his other wife Ishuree, that she died from the effects of it, and to conceal their guilt the prisoners took the body and hung it up on a tree close to the prosecutor's house.

Case of KOMUL KUPALLY and others.

The prosecutor's statement before this court is that he married his daughter (deceased) to the prisoner Komul Kupally, who subsequently took another wife. The two wives disagreed, and the prisoner having taken a dislike to his (prosecutor's) daughter, used to treat her so ill, that she preferred remaining with prosecutor to being with her husband. That one Monday, about the middle of *Phalgoon*, the prisoners Surroop Kupally and Sonaram Kupally (father and uncle to the prisoner Komul) came for deceased, and took her to her husband's home. On the Wednesday following he was going out in the early morning, and saw his daughter suspended by the neck to a mango tree at the back of his house. He immediately sent for the three prisoners, and on their arrival indirectly taxed them with having murdered his daughter. They set out together, taking the body with them for the purpose of cremation, but the prisoner Kumul Kupally having run off on the way, prosecutor would not allow it to be burned without information being given to the police. He left the body in charge of a *chowkeedar* and went to report the circumstance, but found that his son-in-law Komul had preceded him and had already done so.

There are no witnesses to the fact, but the deposition of the sub-assistant surgeon clearly shews that deceased was strangled, and not *hanged* by the neck. In short his evidence sufficiently establishes the fact of the murder having been committed.

It is clearly established that the prisoner Komul Kupally's two wives disagreed, that the prisoners disliked deceased, and was in the habit of ill-treating her. It is shewn that deceased and the prisoner retired to rest together on the night of the occurrence, the 1st March last, and from the evidence of the witnesses Nos. 4, 5, 6 and 9, it appears that they went to the house of the prisoners Surroop and Komul (father and son) at about 9 or 10 o'clock on the same night, and saw the body of Musst. Umerto lying on a mat in their house, and that they heard from them that deceased had hung herself.

It will be seen that the prosecutor, in his first statement given to the police *darogah*, made no mention of having found his daughter's body suspended by the neck to a tree at the

back of his house. He now explains this by saying that the *darogah* refused to record what he had to say. This may be, but I am inclined to think from his having accompanied the prisoners to burn the body, that in the first instance they had all agreed that it was best to hush up the matter. It is difficult to understand what prompted the prisoner Komul Kupally, who would naturally seem to be the person most desirous of concealing the matter, to leave the party when they were on their way to burn the body and rush off to give information to the police. It may probably have arisen from some misunderstanding having taken place on the road, and a desire consequently to be the first to lay a charge.

The prisoners deny the charge and plead that deceased hung herself. Five witnesses have been examined in their behalf, but they say nothing beyond their having heard from the prisoners that deceased had committed suicide.

There are not, as I have remarked above, any eye-witnesses to the murder; but it is proved that quarrels constantly occurred between deceased and the prisoner Komul's other wife Ishuree, that ill-feeling existed on his part towards deceased, and that on the day of the occurrence he ill-treated her. It is also proved that the prisoner and deceased retired to rest together on the evening of the 1st of March last, and that at about 10 o'clock the same night, she was lying dead in the prisoner's house, he assuring the witnesses who saw the body that she had hung herself. During the night the body appears to have been removed and suspended to a tree at the back of the house of her father the prosecutor, and in the morning it was being taken to be burned when the prisoner suddenly left the party accompanying the body, hastened to the *thannah*, and charged Ramguttee and Gopal, sons of the prosecutor, with the murder. Considering the evidence of the sub-assistant surgeon, and the charge laid by the prisoner Komul Kupally at the *thannah* on the 2nd March, the plea of deceased having committed suicide is not only worthless but highly criminating. Under all these circumstances I consider the evidence sufficient to fix the crime charged on the prisoner Komul Kupally, and beg to recommend that he be transported for life.

The *futwah* of the law officer convicts the prisoner Komul Kupally of culpable homicide, and the prisoner Surroop Kupally of being accessory after the fact, and declares them liable to *akoobut*. He acquits the prisoner Sonaram alias Sonatun Kupally. I dissent from this finding with reference to the two prisoners convicted, I would convict the former, as I have above shewn of murder. Against the latter I do not consider there is sufficient proof to warrant a conviction, I

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would recommend his acquittal. I concur in the acquittal of Sonaram Kupally, and have directed his release.

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KOMUL
KUPALLY and
others.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Baronet and Mr. J. Dunbar.) There is the strongest presumptive evidence against the prisoner No. 8, Komul Kupally. The depositions of several witnesses prove, that the prisoner and his wife, the deceased Umerto, had constant disputes in consequence of which she used to go frequently to her father's house, and stay there. On the day of the murder the prisoner had brought her away forcibly and at night she met her death, and it was reported, that she had hanged herself. The prisoner, prosecutor and others were on their way to burn the corpse, when the prisoner ran off, and charged the other prisoners with her murder. Four witnesses depose to having seen the corpse in the prisoner's house, they tried to resuscitate the deceased, but in vain. The medical opinion states that strangulation was the cause of death: from the appearance and direction of the marks on the neck of the deceased, it was clear, she did not hang herself. There is no direct proof against the prisoner, but his contradictory statements; his having that day brought the deceased home from her father's house and quarrelled with her; his attempt to fix the offence on the other prisoners at the *thannah*, though he never charged them till then; and the indisputable causes of difference between him and the deceased after his second marriage, are circumstances which raise a violent presumption of the prisoner's guilt, and as recommended by the sessions judge, we sentence him to imprisonment for life in transportation.

We concur with the sessions judge in the release of the prisoner Surroop.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND NARAIN DASS BYRAGEE,

versus

HAOOREEAH NOSYA (No. 2,) FAEZ MAHOMED (No. 3,) FOOL MAHOMED (No. 4,) BATOO NOSYA (No. 5,) RAJEB MAHOMED (No. 6,) KALEE NOSYA (No. 7,) NEELMONEY DASS (No. 8,) DIURMOO DASS (No. 9,) CHYTUN DASS (No. 10,) KAMDEB DASS (No. 11,) FOOL CHUND DASS (No. 12,) MONY NOSYA (No. 13,) GHANGAR NOSYA (No. 14) AND HAOOREEAH NOSYA 2ND (No. 15.)

Rungpore.

CRIME CHARGED.—1st count, dacoity attended with wounding in prosecutor's house, and plundering property, value Rs. 61-4; 2nd count, with being accomplices to the above mentioned dacoity; 3rd count, with having belonged to a gang of dacoits; 4th count, Nos. 4 to 8 and 10 to 14, knowingly taking and having in possession property acquired by the above dacoity.

CRIME ESTABLISHED.—Nos. 4, 5, 6, 11, and 12, of dacoity attended with wounding, and Nos. 2, 3, 7, 8, 9, 10, 13, 14 and 15, of being accomplices to the above mentioned dacoity.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore on the 30th May, 1853.

Remarks by the officiating sessions judge.—This was a case of dacoity in which one of the females of the house was knocked down and slightly wounded; it occurred on the 25th *Phalgoon*, i. e. 7th March, 1853, in the jurisdiction of the Chilmaree *thannah*.

Five prisoners convicted as principals, and nine others as accomplices in a case of dacoity with wounding, and sentenced to ten years' imprisonment. Appeal rejected.

The prosecutor, Narain Dass, states that he had retired for the night, when he was awoken by his sister, calling out that there was a fire; she was immediately silenced by the dacoits, who came in number about 15 or 20 men, and *looted* the house to the amount of some 61 rupees.

Witnesses, 1, 2 and 3, were awoken by the noise and went to prosecutor's house, but the dacoits were gone, they saw the injured woman.

Witness, 32, Hurree Priya, the mother-in-law of prosecutor saw the dacoity, but she was knocked down and neither recognized the man who did it, nor any one else.

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NOSYA and
others.

Witnesses, 6 and 7, witnessed the mofussil confessions of all the prisoners before the *darogah*, which were all free and voluntary.

Witnesses, 9 to 16, to the confessions of all the prisoners (except Batoo, prisoner No. 5,) before the magistrate, they were all voluntary and unbiased.

Nos. 17 and 18, witnesses to the finding of property, Nos. 1, 2 and 3, in (No. 4,) Fool Mahomed's house, which he confessed them to be prosecutor's.

Nos. 19, 20 and 21, witnesses to the property marked 4 in (5) Batoo's house, which he claimed as his own.

Witnesses, 7, 22 and 23, saw property (No. 5,) produced by Rajah Mahomed (No. 6,) who confessed it was prosecutor's also, No. 7, by Kalee Nosya No. 7.

Witnesses, 24 and 25, saw Neelmoney, No. 8, produce No. 8, from a field.

Witnesses, 26 and 27, saw Chytun No. 10, produce No. 7, from a sugar *khet*.

Witnesses, 28 and 29, saw Fool Chund, No. 12, produce No. 9, and say it was prosecutor's.

Witnesses, 30 and 31, saw the property produced by Ghangar, No. 14, and Mony Nosya, No. 13, which they confessed was prosecutor's.

Witnesses, 1, 2, 3 and 32, recognized all the property produced to be prosecutor's.

The prisoners, Nos. 2 to 15, all confessed before the *darogah* and magistrate except No. 5, who denied in the *fouzdarry*; before sessions, all plead not guilty.

Prisoner, No. 2, pleads good character, witness, No. 35, knows him to be respectable.

Prisoner, No. 3, pleads ill-usage and denies confessions. No witnesses.

Prisoner, No. 4, denies confessions, declares he was ill used, pleads good character, witnesses, 41 and 42, knew he has no means and suspect him now.

Prisoner, No. 5, denies and claims property. Witnesses, Nos. 50 and 57, do not know the property.

Prisoner, No. 6, denies, pleads good character. Witness, No. 55, the prisoner denies him as his witness, witness, No. 56, knows the prisoner to be respectable.

Prisoner, No. 7, denies, pleads good character, witness, No. 57, knows him to be respectable.

Prisoner, No. 8, denies, pleads good character, his witnesses not present.

Prisoner, No. 9, denies, pleads good character, but has no witnesses.

Prisoner, No. 10, denies, pleads good character, but has no witnesses.

Prisoner, No. 11, denies, pleads good character, witnesses, No. 72, (cousin) No. 73, (relative) and No. 74, know him to be respectable.

Prisoner, No. 12, denies, pleads good character, witnesses, Nos. 77 and 79, have no means and now suspect him.

Prisoner, No. 13, denies, pleads good character, witnesses, Nos. 81, 82, 84 and 85, suspect him now, and No. 83, knows him to be respectable.

Prisoner, No. 14, denies, pleads good character, witnesses, Nos. 88 and 89, knew, was respectable, but now suspect him.

Prisoner, No. 15, denies, witnesses, Nos. 90, 92 and 93, believe him a *budmash* and No. 91, believes him respectable.

I tried the case under Act 24, of 1843, and see no reason to doubt the finding of the property and confessions of the prisoners. I, therefore, convict Nos. 4, 5, 6, 11 and 12, of dacoity, 1st count, and Nos. 2, 3, 7, 8, 9, 10, 13, 14 and 15, of 2nd count.

Sentence passed by the lower court. Each to be imprisoned for ten years, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.) With the exception of Batoo Nosya, all the prisoners made full and detailed confession before the police, which they repeated before the magistrate ; most of them also gave up property, acknowledging it to have been gained by the robbery. Batoo Nosya had also property found in his house. The prisoners have all appealed, some repudiating their confession, and others stating they were invited by the other prisoners to join in the dacoity ; but refused to do so. I see no reason to interfere with the order of the sessions judge and reject their appeals.

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Case of
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NOSYA and
others.

PRESENT :

J. R. COLVIN, Esq., Judge.

INDRONARAIN PUHAREE,

versus

BEHAREE SINGH (No. 2, APPELLANT,) RAMJEEBUN MISSER (No. 3, APPELLANT,) AND BENEE TEWAREE (No. 4.)

Midnapore.

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Case of BEHAREE SINGH and another.

CRIME CHARGED.—1st count, dacoity in the dwelling house of the prosecutor and plundered therefrom Co.'s Rs. 2,500; 2nd count, aiding and abetting in the above, and 3rd count, prisoner, No. 4, privity to the above.

CRIME ESTABLISHED.—Prisoners, Nos. 2 and 3, aiding and abetting in the dacoity, and prisoner, No. 4, privity to dacoity.

Committing Officer.—Mr. V. H. Schalch, magistrate of Midnapore.

Two prisoners convicted of dacoity, and a third of privity to the offence and sentenced to seven years and five years' imprisonment respectively, appeal rejected; whilst in the act of making his escape. The prisoner, No. 4, but sentence considered to be too light with reference to the circumstances of the case.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 31st May, 1853.

Remarks by the sessions judge.—On the night of the 30th April, the lodging of the prosecutor in the centre of the town of Midnapore, was entered by a gang of thieves, who broke open a *pettara* and plundered therefrom cash to the amount of Co.'s Rs. 2,500. The prisoner, No. 2, Beharee Singh, was arrested by some neighbours, the witnesses, Nos. 1 and 2, whilst in the act of making his escape. The prisoner, No. 4, Benee Tewaree, was arrested the following day on suspicion, and on his statement the prisoner, No. 3, Ramjeebun Misser, was also seized. The prisoners, Nos. 3 and 4, confessed before the *darogah* and the magistrate, the former to his complicity in, and the latter to his privity to, the robbery. In this court the prisoners all plead not guilty, but offer no defence further than that their confessions were extorted by threats and promises. The confessions were taken down by the *darogah*, on the 1st May, and repeated before the magistrate the same day. There is no reason to doubt their truth and that they were voluntarily made. The only evidence against prisoners, Nos. 3 and 4, are their confessions, and the measure of their guilt must be estimated by them. Prisoner, No. 3, in his confession implicates No. 4, as an accomplice, but the latter admits in his confession only a guilty knowledge of the robbery and denies that he was actively engaged in it. There is presumptive proof that he was not the instigator of it, and the probabilities are that he was concerned in it, but this is not enough to convict him on the 1st and 2nd counts of the charge. The prisoner, No. 2, denies his guilt throughout, but

his identity is sworn to by the witness, No. 14, as the party, who seized and held him down, whilst his accomplices plundered the *pettara*, which is corroborative by his arrest on the spot with a club in his hand by the witnesses, Nos. 1 and 2, at the moment the hue and cry was raised. The prisoner in his defence before the magistrate and *darogah* varies his statements, and is unable to explain his presence at the prosecutor's door when the thieves were making off with the property they had plundered. The presumption is strong that he was an aider and abettor in the dacoity. Prisoners, Nos. 2 and 3, are accordingly convicted on the 2nd count, and prisoner, No. 4, on the 3rd count of the charge, and sentenced as indicated in the statement.

Sentence passed by the lower court.—Prisoners, Nos. 2 and 3, to seven (7) years' imprisonment each, and prisoner, No. 4, to five (5) years' imprisonment, with labor and irons, and to pay a fine of Rs. 2,386, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin.) The prisoners No. 2, Beharee Singh, and No. 3, Ramjeebun Misser, have appealed. But the former was apprehended with a club in his hand, when running away with the rest of the gang immediately after the occurrence of the dacoity, and the latter confessed fully before the *darogah*, on the 2nd May, and before the magistrate, on the 3rd May; (the sessions judge is in error in stating that the confessions to the *darogah* and magistrate were both on *the same* date, the 1st May, as he is also in error in stating that the prisoner, No. 4, who has not appealed, made any confession to the magistrate,) there is no ground for distrusting the confession of No. 3, before the magistrate, or the strong evidence against the other prisoner, No. 2. The appeals contain merely vague assertions of ill treatment by the police. I think the convictions therefore quite correct, and have only to remark, with reference to the extreme boldness of the attack on the prosecutor's house, immediately after dusk in a populous part of the town of Midnapore, and to the large sum which was carried off, that a more severe sentence than imprisonment for seven years would have been well justified as regards these two prisoners.

The circumstances of this case are more fully developed by the correspondence,* which passed on the review of the report

* Extract (paragraph 4,) from a letter No. 742, dated 25th June, 1853, from register of the Nizamut Adawlut to sessions judge of Midnapore.

"In this case* also it is not mentioned in the sentence passed upon the

* Beharee Singh and others, Nos. 2 to 4, of statement No. 6. prisoners, whether the fine awarded under Act 16, of 1850, is to be paid jointly and severally. You are requested to supply the omission, and to state what was the evidence by which you were satisfied that property of such large value, as that mentioned in the

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 July 29. Paragraph 4, Court's letter to judge, No. 742, of the 25th ultimo. Paragraphs 4 and 5, of the judge's reply, No. 120, of the 12th instant, and paragraphs 1 to 4, Court's orders, No. 811, of the 15th instant.

Case of BEHAREE SINGH and another. charge, was really taken. The court observe also that the gang is spoken of as one of *thieves*, and would be glad to know what are the circumstances in the case which warranted a conviction of dacoity."

" Extract (paragraphs 4 and 5,) from a letter No. 120, dated 12th July, 1853, from the sessions judge of Midnapore, to the register of the Nizamut Adawlut."

" In the case of Beharee Singh and others, the sentence was that the fine imposed under Act XVI. of 1850, should be paid by the prisoners, meaning thereby collectively; if each party had been sentenced to pay the whole amount it would have been so recorded. In future with the court's approval the sentence shall be so worded as to obviate all doubt.

" The particulars of the case of Beharee Singh and others are, as I have related them in the statement. A body of armed men finding the front door open rushed into the lodging of the prosecutor, broke open a *pettora* that was in one of the rooms and carried off Co.'s Rs. 2,500; one of the prosecutor's servants, who was seated at the entrance, was seized by the throat, thrown on the ground and held in that position by one of the robbers, till his accomplices had made their escape with their booty. The prosecutor is a servant of Raja Indronrajan Ray; according to his statement he came to Midnapore with the view of purchasing a mehal that was to be sold at the collector's *cutcherry*, and for that purpose brought with him 2,500 Rs. This money he deposited in a *pettora* in his lodging, and the fact of its being there was known to his attendants, amongst others his cook, who absconded on the night the robbery occurred; of the fact of the money having been brought to Midnapore, and deposited in the *pettora*, there can be no doubt, as it was fully proved by the evidence for the prosecution. The mode in which the robbery was committed (viz, as to the number of persons concerned, the weapons with which they were armed and the violence used) was such as, in my opinion, to constitute the crime of dacoity and to warrant a conviction on that charge."

Extract (paragraphs 1 to 4) from a letter No. 811 dated the 15th July, 1853, from register of the Nizamut Adawlut to session judge of Midnapore.

" The Court, having had before them your letter No. 120 of the 12th inst. desire me to observe, with reference to your 1st paragraph, that it should always be distinctly mentioned in a sentence whether the fine awarded under Act 16 of 1850, is to be levied jointly or severally, and that, unless from special circumstances in a case, such fines should be imposed jointly and severally upon prisoners convicted of participation in a common offence.

" With reference to your explanation in the case of Mudhoo Doss and others in which you state that the word 'burglaries' was used in its literal acceptation, as meaning to imply that the house had been broken into by robbers, the Court observe that as the word has another well-understood meaning in Law, it is better not to use it in reference to a dacoity by open violence.

" Advertising to your explanation in the case of Beharee Singh and others, the Court direct me to refer you to the 1st paragraph. The meaning is not that each party should, *separately*, pay the whole amount; but that all are, jointly and severally, liable, till the entire amount is realized among them.

" The Court desire me to state that your explanation, as to the amount of property carried off in the above case, is satisfactory. They observe that the circumstances warrant the conviction of dacoity, but the term 'thieves' should not have been employed to describe the criminals."

PRESENT.

SIR R. BARLOW, BART., AND J. DUNBAR, Esq., *Judges.*GOVERNMENT AND MUSST. SOOBUDDRA,
*versus*URJOON JEEONEE (No. 1,) NUSHAYA JEEONEE
(No 2,) LAL CHAND JEEONEE (No. 3,) AND JUG-
GURNATHI JEEONEE (No. 4.)

Backergunge.

CRIME CHARGED.—No. 1, wilful murder of Surroop Jeeonee; Nos. 2, 3 and 4, 1st count, accessories after the fact to the above crime; 2nd count, privity.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 8th June, 1853.

Remarks by the sessions judge.—It will be observed that no notice reached the *thannah* of the murder, before the 15th day after its occurrence.

The particulars of the case will be best understood from the following epitome of the examination.

The prosecutor, Musst. Soobuddra, the mother of the deceased, deposes that she does not know the exact date, but it was on a Thursday in *Bysack*, her son Surroop, deceased, witness, No. 10, and Urjoon, the prisoner No. 1, went to Gochbarea bheel, three hours' journey off to snare fish. The next day, Friday, Gokal returned, saying that they had been very successful and that another hand was necessary and a bigger boat. He engaged with the witness Bungo, No. 11, for his boat and his services, and getting a little food for Surroop from the deponent, these two on the same day started off in Bungo's boat to the bheel, where the deceased and the prisoner had been left alone. The next day, Saturday, towards evening, Gokul, Bungo and Urjoon, prisoner, returned to the village, bringing with them in the boat the dead body of Surroop. Word of this was sent to the deponent, when they reached the *ghat*, and she went down there, and saw her son's body wrapt in a *hogla* mat. She wanted to undo and open the mat to look at the body, but Urjoon said there was no use and would not let her. On the deponent questioning him as to how the deceased died, he said "whether cholera did it or I, it is all one now, as he is dead." Deponent had been told by Gokul and Bungo that they found Surroop dead on their arrival at the bheel, and that Urjoon told them he had died of cholera, but they said they did not believe this, and suspected that Urjoon had murdered him. When deponent was not

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Prisoner charged with wilful murder convicted and sentenced capitally. Three other prisoners charged as accessories after the fact, sentenced to three years' imprisonment.

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allowed to look at the body, she therefore remonstrated and told Urjoon that the body should not be burnt. However he paid no attention to her, but having called the other prisoners to his assistance, they together burnt the body. Deponent saw a wound on the temple of the deceased ; she says that she told Petumber to tell the *chowkeedar* to inform the police ; she adds that the prisoner had an attachment for Surroop's wife, and that both she and Surroop were angry with him for his repeated attempts to seduce the former, and in revenge for this, he killed the deceased.

Witness No. 9, Shoodaram, went on the said Saturday to fish in the same bheel ; fell in with the prisoner at about 7 or 8 o'clock A. M. on the bank of the bheel ; saw him standing by the side of the dead body of Surroop, which was spread out on a *hogla* mat and a musquitos curtain over it, both mat and curtain were marked with blood ; was told by the prisoner that Surroop died of cholera, but seeing the blood he said that was nonsense, when the prisoner told him to say nothing about it. A wound, as from a *dow*, was on the deceased's temple. Returning from the bheel to the river, this witness met Gokul and Bungo, to whom he communicated what he saw about Surroop and told them to enquire more particularly about it. He met Ruddoo also, to whom he told the same.

Witness No. 10, Gokul, deposes that on his return to the bheel with Bungo, they met the above witness, from whom they heard of Surroop's death. On their arrival at the bheel, they saw the body on the mat in the state described by Shoodaram. The prisoner said that he died of cholera, but witness did not believe him, but guessed that he had murdered him with a *dow* he had with him. The body was then conveyed by boat to the village, where all the parties lived, and when they got to the *ghat* the witness went up and told the prosecutrix, and the wife of the deceased, that Urjoon had killed Surroop ; witness told them not to let the body be burnt without giving notice to the police ; is aware that prisoner for some time past has had an attachment for Surroop's wife, and that in last *Kartick*, Surroop chased him away from his house.

Witness No. 11, Bungo, corroborates the testimony of the above witness.

Four other witnesses, of whom one was wife to the deceased, depose to having seen the body of Surroop in the mat ; to having observed a wound on the temple, and to an attachment existing on the prisoner's part for Surroop's wife.

Witness No. 15, Ram Soonder, Chowkeedar of the village where the parties reside, says the village is three hours' jour-

ney from the chief place under his watch ; that he heard of the affair from Petumber and others, and went accordingly to the *thannah* to inform ; says that the village of Harkhanah has but four families in it altogether ; is aware that the prisoner had an attachment for Surroop's wife, and supposes that the parties concealed the murder to please the prisoner.

It will be seen from the above that there are no eye witnesses to the murder, but the prisoner's two confessions before the police and before the magistrate, supply that deficiency in the evidence.

Before the police, the prisoner confessed as follows : " About three years ago, I commenced an intimacy with Musst. Poorneemah, the wife of Surroop Jeeonce, whose house is seven russces off from mine. One day in the month of *Kartick* last, about two *dunds* of the night, I went to visit Poorneemah, and was standing in the north-western side of the *baree*, when Surroop saw me, and on my running away to the north, he tried to catch me. In consequence of the watch kept by Surroop, I have hitherto been unable to gain admittance to his wife, and from this has arisen a feeling of great ill-will between Surroop and myself. On Thursday, the 24th of *Bysack* last, at about one-half *puhur* of the night remaining, myself, Surroop aforesaid, and Gokul Jeeonee, my sister's husband, set out according to custom to catch fish in a bheel called *Gachbareea*. We arrived there on Friday morning at about four *dunds* of the day, when Gokul went to cook and myself and Surroop went to empty out the water of a hollow. Having observed that there were plenty of fish in the said hollow, we sent Gokul home to get a boat, and some one else as a partner with us. I and Surroop took our evening meal and again employed ourselves in baling out the water. At about one-half *puhur* of the night, we laid down to sleep on a *hogla* mat, near the hollow, and Surroop fell asleep first. In this interval the thought struck me that Surroop being a stronger man than myself, and as I could not be certain when he might take vengeance on me for my attachment to his wife, and thinking that by his destruction, our enmity would be appeased, I resolved upon murdering him. Surroop being asleep on his right side, I struck him with a *dow* I had with me, on his left temple, upon which he moaned and groaned once and then became insensible ; immediately I threw him into the water, and I suppose life then left him. It was then about 3 o'clock A. M., I became very much alarmed at what I had done and could not sleep. When it became light, I pulled Surroop's body out of the water. The wound that I gave him on the temple was cut into the bone and was bleeding ; I wrapt the body in a pair of mosquito curtains which Sur-

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roop had brought with him ; I sat down by the body ; at about 8 o'clock, Shoodaram came up to catch fish ; he saw the body, asked me about it. I concealed the facts from him, and told him that Surroop had been attacked by cholera, and that some demon finding him in the rain and storm had seized him and drowned him. Shoodaram, hearing that Surroop had died, went away without attempting to catch any fish. About 12 o'clock, Gokul and Bungo arrived with a boat. Leaving it in the *khal* which was some distance off the *bheel*, they came to where I was, on foot ; seeing the body, the wound on it and blood on the mosquito curtains, they questioned me on the subject. I told them what I had told Shoodaram about Surroop having been seized by a demon, and that I supposed that he must have got a scratch from a bamboo. I also told this to Ruddoo, cousin to the deceased, who had heard of Surroop's death from Shoodaram. Gokul, Bungo and myself then consulted how we should take the body home. We carried it to the boat, rolled a *hogla* mat round it and went off to our village. Ruddoo had given information before to the prosecutrix, &c. &c." (as from this point the villagers have themselves deposed to what took place, it is not necessary to continue the confession further).

His confession before the magistrate is the same, except that he says, the deceased in his convulsions rolled himself into the water, from which prisoner, at dawn, lifted him out.

These two confessions have been proved by the attesting witnesses. These witnesses one and all say that the confessions were given willingly and readily, and that the prisoner's deportment on both occasions left no doubt on their minds, that his statement was both a spontaneous and a true disclosure.

Before the sessions, the prisoner pleaded not guilty and affirmed, that the deceased died of cholera and that his confessions were extorted.

Relying upon his confessions, the act perpetrated was as deliberate in design, as it was fatal in its execution. The motive was doubtless to get rid of the person, who stood between the prisoner and the object of his illicit passion. It is probable that an occasional indulgence may have given appetite to his desires, and suggested the thought of murder, as a measure necessary to the removal of the only barrier to the complete and uninterrupted enjoyment of the object of his affections. Without some encouragement on the part of the female, I can hardly think that any man could indulge an illicit affection for three years, with any hope of ultimate success, and indeed from the circumstance of the attempted concealment of the murder, the inference is unavoidable, that

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the murderer was regarded with favor by the relatives of the deceased. Such being the motives which led to the deed, and the prisoner's own word supplying the clearest testimony to the deliberation with which it was accomplished, I am constrained to say, that I see no ground upon which any mitigation of punishment can be recommended.

The prisoners, 2, 3 and 4, all confessed at the *thannah* that they saw a wound on the head of the deceased ; all the circumstances of the case shew, that the fact of the death by murder could not but be known to every one in the village. In helping to dispose of the body, (which they admit even at the sessions) the prisoners are in my opinion convicted of being accessories after the fact.

I would convict Urjoon of the wilful murder of Surroop Jeeonee and sentence him capitally. I would convict Noshya Jeeonee, Lall Chand Jeeonee, and Juggernath Jeeonee, of being accessories after the fact to the above crime, and sentence them to three years each with labor in irons in the *zillah jail*.

Remarks by the Nizamut Adawlut.—(Present, Sir R. Barlow : Baronet and Mr. J. Dunbar.) *Sir R. Barlow.*—It is fully proved that the deceased, Surroop Jeeonee, met a violent death at the hands of the prisoner No. 1, Urjoon Jeeonee, in consequence of his having formed an intimacy with the wife of the deceased, Mussumut Poornimah. The prisoner gave a very detailed confession in the mofussil and before the magistrate. The prisoner No. 1, with his relatives, Nos. 2, 3 and 4, burned the body, giving out that deceased died of cholera. The corpse did not in consequence undergo medical examination ; but several witnesses have sworn to the wound on the left side of the deceased's head, from which blood was flowing, and they saw the corpse which they recognised as that of the deceased Surroop Jeeonee.

Prisoner No. 1 and the deceased were left by the witness Gokul in the *jheel*, to which they had all gone for the purpose of catching fish. He sent for another boat and for some one to share in the work ; he took the witness Bungo and returned to the *jheel*, and it was during his absence, that the murder was committed, as described by the prisoner in his two confessions. Notice was not given of the occurrence at the *thannah* for some fourteen or fifteen days, in consequence of its having been currently reported, that deceased died of cholera, but the fact of the violent death and the cause of it are clearly proved.

I concur with the *sessions judge* in convicting the prisoner No. 1, Urjoon Jeeonee, of wilful murder, and would sentence him to death.

The other prisoners confessed to having burned the corpse,

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Case of
URJOONJEEONEE and
others.

1853. saying in the *sessions court* that the deceased had died of cholera, though in the mofussil and before the magistrate they admitted, they saw the wound on the head and questioned prisoner No. 1 as to the cause. I would convict and sentence them as proposed by the *sessions judge*.
- July 30. Case of URJOON JERONKE and others. Mr. J. DUNBAR.—I concur in convicting Urjoon Jeconee of wilful murder and in the sentence of death proposed. I concur also in convicting and sentencing the other prisoners, as recommended by the *sessions judge*.

PRESENT:

J. R. COLVIN, AND J. DUNBAR, Esqs., Judges.

GOVERNMENT,

versus

BHEEKUN KOORMEE.

1853. CRIME CHARGED.—Wilful murder of Ajaib Ram.
Committing Officer.—Mr. W. Ainslie, magistrate of Patna.
Tried before Mr. B. J. Colvin, officiating commissioner of Patna, with powers of a sessions judge, on the 19th July, 1853.

Prisoner convicted of the wilful murder of a *burkundaz* in the *Deegha* jail, where he was confined as a convict, and sentenced to capital punishment.

Remarks by the officiating commissioner.—The prisoner (a convict, but not a life one) is charged with the murder of Ajaib Ram, a *burkundaz*, attached to the Deegha Penitentiary, on the 17th instant, i. e. the day before yesterday.

It appears from the evidence that on the morning of that day, about 9 o'clock or thereabouts, witness No. 1, a *burkundaz*, with witness No 2, a prisoner, was in one of the workshops, having it cleaned, when the prisoner who was coming from the privy seeing deceased on his *charpoy*, seized a '*choputtah*', i. e. a piece of the weaving machine, and rushing upon him struck him two heavy blows on the head, from the effects of which he died very shortly afterwards.

The prisoner confesses the deed, both before me and the magistrate, and says that he was driven to the commission of it, in consequence of the ill-treatment he received from the deceased, and that two of his fellow-prisoners urged him to it.

The civil surgeon deposes that the blows inflicted upon deceased, were the undoubted cause of death. The piece of wood with which they were dealt is about four feet in length, three inches square and of the weight of five seers. It is a ponderous instrument, from heavy blows with which only such a result as death could be expected.

Considering all the circumstances of the case, I am of opinion that the crime of wilful murder is proved against the prisoner. The Law Officer agrees that he killed the deceased, but considers *kissas* barred in consequence of the nature of the weapon used, and for this reason, sentences to *accoobut shudeed*.

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 Case of
 BHEERUN
 KOORMEE.

It is my duty to propose that the prisoner be sentenced capitally, and this without reference to the circumstances detailed in the note to the calendar; for, for such a crime as is now proved against him, nothing short of a capital sentence will meet the ends of justice.

Should a capital sentence be passed by your Court, I propose that orders should be given for its execution, for example's sake, at Deegha, according to Circular Order, No. 42, of 29th June, 1850.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin and J. Dunbar.)

Mr. J. R. Colvin.—The guilt of the prisoner is manifest on the evidence, and on his own confessions. There is no one extenuating circumstance. He is evidently a violent and desperate character.

I would sentence him capitally, and carry the sentence into effect at the Deegha jail, as recommended by the officiating commissioner.

Mr. J. Dunbar.—I concur in the sentence, and also as to the manner in which it is proposed to carry it into effect. The note at the foot of the calendar shews, that the prisoner is a hardened and desperate criminal.*

* The prisoner was sentenced to fourteen years' imprisonment on a charge of dacoity, on the 12th June, 1835, and made his escape from the jail on the 5th July, 1839 ; was re-apprehended and sentenced to three years' additional imprisonment for the escape, on the 13th June, 1850. On the 20th April last, he was committed to the sessions for wounding with intent to murder Shehamut Khan, native doctor of the Deegha Penitentiary, and sentenced, on the 30th April, 1853, to seven years' additional imprisonment.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

Hooghly.

versus

SUDANUND CHUCKERBUTTY.

1853.

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Case of
SUDANUND
CHUCKERBUT-

TV.

CRIME CHARGED.—1st count, dacoity in the house of Damoodher Chunder Tantee at Julsora, on the night of the 16th February, 1850, and plundering therefrom property to the amount of rupees 1,862-12; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of zillah Hooghly, on the 26th May, 1853.

Remarks by the officiating sessions judge.—Two prisoners, Sudanund Takoor and Gorachand, are committed by the commissioner for the suppression of dacoity, for committing a dacoity in the house of Damoodher Chunder Tantee at Julsora, in *thannah* Chunderkona, on the 16th February, 1850, and for belonging to a gang of dacoits according to commitment in calendars No. 1 of March and 3 of April, 1853. They plead *not guilty*. The evidence adduced against them, is that of the approvers, Sindoo Mytee and Haran Telee.

The prisoner, Sudanund Chuckerbutty, at the time the dacoity was committed, confessed at the Manicktollah *thannah*, on the 11th May, 1850, before a mohurir of *thannah* Chunderkona deputed to inquire, that he had in company with the approvers, who now give evidence, and with others of the gang, proceeded from Calcutta and committed the dacoity in question. The confessions of the approvers, taken before the commissioner for the suppression of dacoity in detail, and the evidence now given, corroborate this confession. They deposit before the sessions to both the prisoners having committed, along with them and others of their gang, the dacoity on which the specific charge is made, and to their being associated with them in a gang and committing along with them numerous dacoities.

I conceive the charge clearly established against the prisoner, Sudanund, that the evidence is sufficient, and borne out on reference to the record of the police proceedings, when the dacoity at Julsora was committed. I also conceive the evidence of the approvers to shew, that the prisoner belongs to a gang of dacoits. I therefore convict him of both the charges.

The prisoner, No. 2, Gorachand, sets up as defence, that he was actually in service, at the time the dacoity took place at Julsora, of a gentleman in Calcutta as cook. I have postponed the trial respecting the prisoner No. 2, under the circum-

lar noted in the margin,* as I conceive that the enquiries made in the police were not sufficient, in respect to his being employed as stated at the time of the dacoity, and I have required further evidence on this head.

Resolution of the Nizamut Adawlut No. 672, dated the 16th June, 1853. (Present: Mr. J. Dunbar.) The approvers have given evidence to the commission of several dacoities in company with the prisoner, besides that with which he is specifically charged in the calendar. A report should be required from the fouzdar *mahafiz*, or other officer in charge of the old records, shewing whether all, or any of these dacoities, did occur at the times stated. The Court direct that the papers be returned in order that this report may be supplied.

In reply to the above resolution the following letter, No. 16, dated the 16th July, 1853, was submitted by the sessions judge.

Referring to the orders of the Court No. 672, of the 16th ultimo, in the case noted in the margin*
 * Sudanund Chuckerbutty. I have the honor herewith to re-submit the papers of the case, with copy of a letter from the commissioner for suppression of dacoity No. 218,† dated 13th instant, and a report from his *sherishtadar* shewing that the dacoities referred to had been committed.

Remarks by the Nizamut Adawlut.—(Present Mr. J. Dunbar). The three approvers swear that the prisoner was engaged with them in the Julsora dacoity. Their evidence corresponds with the statements made in their original confessions, taken down under circumstances which precluded the possibility of collusion, and is corroborated by that of the man, whose house was plundered. The prisoner himself also acknowledged before the police, when apprehended three years back, that he was concerned in the dacoity.

In regard to the other dacoities, in which the approvers

† From the commissioner for the suppression of dacoity to the officiating sessions judge of Hooghly, No. 218, dated the 13th July, 1853.

With reference to your letter No. 197, dated the 27th June last, and the resolution of the court of Nizamut Adawlut, which accompanied it, in the case of Sudanund Chuckerbutty, I have the honor to state that the reports of the *mohafizes* of the souzdaree courts, of the districts in which the dacoities with which Sudanund Chuckerbutty is charged occurred, are with the confession of the approver, Sindoo Mytee; I have however directed the *sherishtadar* of this office to draw up another report which I also send.

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Case of

SUDANUND

CHUCKERBUT-

TY.

1853. swear, that the prisoner took a part, corroborative evidence of their occurrence is furnished in the reports of the *sherish-tadar* of the commissioner's office, and of the *mohafizes* of Howrah and the 24-pergunnahs, attached to the confession of Sindoo Mytee, filed in the case of Bhoyrub Kowrah, also now before the Court.

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Case of
SUDANUND
CHUCKERBUTY

I convict the prisoner, Sudanund Chuckerbutty, on both counts, and sentence him to be imprisoned for life in transportation beyond sea.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT,

Hooghly.

versus

BHOYRUB KOWRAH.

1853. CRIME CHARGED.—1st count, dacoity in the house of Damoodar Chunder Tantee at Julsora, on the night of the 16th February, 1850, and plundering therefrom property to the amount of rupees 1,862-12; 2nd count, with having belonged to a gang of dacoits.

Prisoner convicted of dacoity and of having belonged to a gang of dacoits and sentenced to transportation for life.

Committing Officer.—Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of zillah Hooghly, on the 17th May, 1853.

Remarks by the officiating sessions judge.—The prisoner, Bhoyrub Kowrah, is charged with having committed a dacoity in the house of Damoodar Chunder at Julsora, *thannah* Ghuttal, in this zillah, on the night of the 16th February, 1850; also with belonging to a gang of dacoits. He pleads *not guilty*.

The case is committed on the evidence of the approvers, Sindoo Mytee, Haran Talee and Kistodoss Koyburto, Nos. 1 to 3, who depose to leaving Calcutta with the prisoner, and others of the gang, assembled for the purpose, and committing the dacoity in *thannah* Ghuttal.

These depositions correspond with the confessions made before the commissioner for the suppression of dacoity, and are also corroborated by a confession made by Sudanund Chuckerbutty, one of the gang at the *thannah* of Maniktollah, when the investigations in the dacoity were going on. The witnesses also depose to numerous dacoities, which the prisoner committed along with them. I see nothing in the examination made to invalidate their evidence, and conceiving both charges to be proved accordingly, I convict the prisoner and recommend that he be sentenced to transportation for life.

Resolution by the Nizamut Adawlut No. 638, dated 4th June, 1853: (Present : Mr. J. Dunbar). The Court having perused the papers connected with the case of Bhoyrub Kowrah, observe that the evidence is sufficient to convict the prisoner of having been concerned in the Julsora dacoity; but as he is also charged by the approvers with having taken a part in other dacoities (Sheebpore, Baleegunge, Mungirgram, Rajhaut, Neemta, Seeteo and Dauntchur) it is necessary that a report should be furnished by the *mohafiz* or other officer, certifying that such dacoities (or some of them) did take place, as shewn by police reports or otherwise. The Court direct that the case be returned to the officiating sessions judge with instructions to supply the omissions noticed, and to resubmit the proceedings on as early a date as may be practicable.

Further remarks by the sessions judge.—Referring to the orders of the Court No. 638, of the 4th ultimo, in the case

* Bhoyrub Kowrah. noted in the margin,* I have the honor herewith to re-submit the papers of the case with copy of a letter from the commissioner for the suppression of dacoities No. 197,† dated the 29th June, 1853, and a report from his *sheriſhtadar*, shewing that the dacoities referred to, had been committed.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar). The proof against the prisoner consists in the evidence of three approvers. Their evidence corresponds with the statements made by them more than two years ago, under circumstances which precluded the possibility of collusion, and in regard to the particular dacoity charged in the 1st count, it is corroborated by the evidence of the man whose house was

† Letter No. 197, dated the 29th June, 1853, from Mr. E. Jackson, commissioner for the suppression of dacoity, to Mr. J. S. Torrens, officiating sessions judge of Hooghly.

I have the honor to acknowledge the receipt of your letter No. 185, dated the 13th instant with accompanying copy of a resolution of the court of Nizamut Adawlut No. 638, dated the 4th instant, in the case of Bhoyrub Kowrah.

In accordance with the order of the Court, I submit a report from the *sheriſhtadar* of this office, stating that the papers of all the dacoities mentioned by the approvers, viz., those at Sheebpore, Baleegunge, Mungirgram, Rajhaut, Neemta, Seeteo and Dantchur have been sent to this office, and that those papers shew that the dacoities in question had not only occurred, but were reported and carefully enquired into. Some of them have since been returned to the offices to which they belong. The papers of the dacoities of Sheebpore, Baleegunge, Rajhaut and Dantra have been inspected by myself; I can therefore certify to their occurrence. The Mungirgram case occurred while I was joint-magistrate of Baraset and was investigated by me personally on the spot, and the account given of that dacoity by the approvers tallies exactly with the facts witnessed by me the morning after it occurred.

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Case of
BHOYRUB
KOWRAH.

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Case of
BHOYRUB
KOWRAH.

attacked and plundered. The letter of the commissioner for the suppression of dacoity and the report of his *sheri-shadar*, now sent down by the sessions judge, leave no room to question the fact of the occurrence of the several dacoities mentioned by the approvers, in which the prisoner is stated to have been concerned. I concur in the conviction upon both counts, and sentence the prisoner, Bhoyrub Kowrah, as recommended by the sessions judge, to imprisonment for life in transportation beyond sea.

Mymensingh.

1853.

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Case of
SHEIKH
JATTRAA.

Prisoner con-
victed of bur-
glary and sen-
tenced to three
years' impri-
sonment. Ap-
peal rejected.

PRESENT:

J. DUNBAR, Esq., Judge.

DUSHARUT CHUNG AND GOVERNMENT,

versus

SHEIKH JATTRAA.

CRIME CHARGED.—Burglary in the house of the prosecutor and theft of property valued at rupee 1-7 annas.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. R. Alexander, officiating magistrate of Mymensingh.

Tried before Mr. W. Trotter, officiating sessions judge of Mymensingh, on the 21st May, 1853.

Remarks by the officiating sessions judge.—The prosecutor's house was burglariously entered by the prisoner on the night of the 11th May last, who took out some property and again entered the house for other property, when the prosecutor's brother awoke and seizing him called out, when the prosecutor came up and secured him, and found it was the prisoner whom they knew before. The prisoner on his apprehension said that he did not take any of the things away, they were all outside and no one else came with him. The prosecutor then went out and found the stolen articles as also the instrument, *sind katee*, with which the burglary was effected. The prisoner in the *thannah*, before the magistrate and in this court, confessed having committed the burglary, and as he is an old offender, having been previously imprisoned for theft, I concurred in the *futwa* of the law officer, and sentenced him to the punishment I considered him deserving.

Sentence passed by the lower court.—Imprisonment with labor and irons for the period of three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) It is difficult to understand what benefit the prisoner could expect from his appeal. He was taken in the fact and confessed his guilt, at every stage of the proceedings. The sentence is confirmed.

PRESENT:

J. R. COLVIN, Esq., *Judge.*
H. T. RAIKES, Esq. *Officiating Judge.*

NUSEERAM SHEIKH AND GOVERNMENT,
versus

MUDUN GAURAR (No. 1,) AND RAM COOMAR KOO-
LOO CHOWKEEDAR (No. 2.)

Nuddea.

CRIME CHARGED.—Burglary in the house of Dwarick Bagchee.

1853.

Committing Officer.—Baboo Issur Chunder Ghosal, deputy magistrate of Santipore.

July 30.

Case of

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 13th July, 1853.

MUDUN GAURAR and another.

Remarks by the sessions judge.—I submit this trial under the provisions of Clause 3rd, Section 4, Regulation IX. of 1831, as I differ in opinion with the law officer, regarding the guilt of the prisoner No. 2.

The prisoner, a chowkeedar, convicted of attemptat bur-

The chowkeedars of Belpookhuria, a little after midnight, seized one of the prisoners No. 1, in the act of committing a burglary, and called out for aid, when three or four more chowkeedars of the same place ran to his assistance. He told them he had seized prisoner No. 1, and that three or four more persons had ran off in the direction of a mangoe tree not very distant. They state that they went to the spot indicated, and in the jungle they found prisoner No. 2, concealed with a spear, which has been produced in court, that they gave him two or three blows with sticks and seized him.

tenceed to five years' imprisonment. His accomplice sentenced to three years by the sessions judge.

All the witnesses are chowkeedars of Belpookhuria, prisoner No. 2, is a chowkeedar of Natoongunge, which is attached to Sonedangah, where he says he was seized, and named witnesses, and has all along pleaded utter ignorance of the whole business.

The deputy magistrate of Santipore who committed him for trial did not examine him at all. He only asked him :

1st. If he was guilty or not ?

2nd. If he had been implicated in any crime before ?

3rd. If he wished to call any witnesses in exculpation ? and

4th. If he knew how to read or write ?

He named some witnesses who were summoned by the deputy magistrate and said they knew nothing, and with that he was satisfied that the accused was guilty, and committed him. He has made no investigation nor tried to find out the real truth of the case, and it is very difficult with such crude

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proceedings, to admit that he had good grounds for sending the prisoner up for trial.

July 30.

*Case of
MUDUN GAU-
RAR and ano-
ther.*

He may say that the prisoner (No. 2,) was implicated by the confession of the prisoner No. 1, at the *thannah*, but No. 1, has repudiated that confession, and it was taken by a *darogah* named Fuzul-ool Huq, whom I have known for several years, and in whose probity I have no reliance. The persons, who have given evidence to prove the confession, are poor creatures of very low station in life, and could be frightened by such *darogah* to swear to any thing. The story told by witnesses Nos. 1, 2 and 3, is in my opinion too consistent to be trust-worthy, and as to prisoner No. 2 not making any defence, I do not wonder at it. A connected story has been told by a set of *chowkeedars*, that they went into a dark *jungle* after midnight and found him concealed in the bushes, which is in itself a most improbable tale, as no Bengalee would have the courage to venture into a dark *jungle* at night, under the circumstances these men say they did, and the witnesses, whom he named to clear him, declare they know nothing. It is not therefore to be wondered at, that the prisoner could not make any defence, when he was called upon to do so.

The prisoner No. 1, who is said to have made a voluntary confession to the *thannah darogah*, did not name prisoner No. 2, as having accompanied him and the others he implicated in the first instance. He says they went from Nuddea and crossed the river to Belpookhuria, and that No. 2, joined them there. This it is probable he would not have said at all, if the *chowkeedar* had not seized the man, as he avers, in his own village. It is well known that, almost generally speaking, the *chowkeedars* of one village bear an enmity to those who belong to others in the neighbourhood, and I am convinced that if the deputy magistrate had given himself a little trouble in putting a few questions to the accused, to ascertain what he had to say for himself, or made some local investigation without the aid of the *darogah*, he would have been satisfied, that the charge has been got up against the prisoner No. 2. I would have questioned him, when he was brought before me, had it not been contrary to rule.

The law officer giving credence to the testimony of the *chowkeedars*, and also on the ground of the witnesses named by the prisoner, having before the deputy magistrate declared themselves ignorant of any thing in his favor, has declared him guilty on violent presumption.

I am of opinion that the evidence of the *chowkeedars* is unworthy of credit, as well as the confession of the prisoner No. 1, purporting to have been made at the *thannah*, and as he, prisoner No. 2, was so seized, it was necessary to bring

something into the confession to implicate him ; 2nd ; that the prisoner for want of credible legal proof is entitled to his release.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin and H. T. Raikes.) We think that the sessions judge has not shown sound and sufficient reason for doubting the evidence against the prisoner, No. 2, Ram Coonar Kooloo, Chowkeedar, whom the law officer would convict.

The burglary took place at midnight of the 23rd April. By about 10 o'clock the next morning, both prisoners were brought before the *darogah*, and the answer of No. 2, was taken at once. It was to the effect that he had been called off his beat at 3 p. m. of the preceding night by the *chowkeedars* of the Belpookhuria village, on the statement that they had seized a thief, and that he was then wantonly seized and ill-treated. He endeavoured in that answer to account for *his not having his chowkeedar's chuprass on at the time of his seizure*, by saying that he had left it at the house of a *mistree* in his village. Witness, No. 1, Mohesh Ghose, Chowkeedar, said, in his deposition before the *darogah*, on April 24th, that immediately after the prisoner, No. 2, had been seized in the *jungle*, close behind the house, on which the attempt at burglary was made, "Loharam Ghose, Sonatun Mudduck, Sreenath Mudduck and other villagers, came up." Two of these villagers, Loharam Ghose and Rameshur Ghose were examined before the magistrate, and distinctly deposed to having come up on the alarm, and having found *both the prisoners apprehended*, as the Belpookhuria *chowkeedars* describe. The two witnesses in question were sent up to the sessions as witnesses to the *sooruthal*, but were not examined by the sessions judge ; why, does not appear. The evidence of the *chowkeedars* against the prisoners is consistent and uniform, and supported by the depositions of Loharam Ghose and Rameshur Ghose before the magistrate. The account given by the prisoner of his seizure is far from probable and quite without confirmation. The deputy magistrate might have examined him more closely and in detail, but he had full opportunity of saying all that he wished in his defence.

We convict the prisoner, No. 2, Ram Coonar Kooloo, Chowkeedar, of attempt at burglary (for the burglary was not completed) and sentence him to imprisonment with labor and irons for five years. The sessions judge should pass his sentence (of imprisonment for three years) on the prisoner, No. 1, as for *attempt at burglary*.

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Case of
MUDUN GAU-
RAR and ano-
ther.

PRESENT:

SIR R. BARLOW, BART., *Judge.*
 H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND NAIMOODDEEN,
versus
 GOLUCKCHUNDER DOSS.

Backergange.

1853.

July 30.

Case of
 GOLUCK-
 CHUNDER
 Doss.

Prisoner con-
 victed as an
 accomplice in
 murder, and
 sentenced to
 fourteen years'
 imprisonment
 in banishment.

CRIME CHARGED.—1st count, wilful murder of Ashoree Khondkar; 2nd count, riot attended with the culpable homicide of Ashoree Khondkar, the wounding of Naimooddeen and the forcible abduction of Tumeezooddeen, on the 10th December, 1852, from which date the said Tumeezooddeen has not been heard of.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 5th July, 1853.

Remarks by the sessions judge.—This case* was lately before the court of Nizamut Adawlut, referred to them with my letter No. 41, dated the 2nd June, 1853.

In respect to the two prisoners, regarding whom that reference was made, the superior court observed as follows :

"The details of this case exhibit a most aggravated offence committed with the greatest deliberation. The prisoners and many others, not yet apprehended, collected near the house of the prosecutor and his two brothers, and just before the sun rose, when the prosecutor went out to see who had come there, seized him and Tumeezooddeen, his brother, of whom it would seem, no trace is to be found up to the time of the sessions trial. Prosecutor was wounded and Tumeez carried off by the assailants, said to be on the part of Ram Ruttun Roy, the sole purchaser of purgannah Beer Mohun; Ashoree, deceased, prosecutor's other brother, endeavoured to rescue Tumeez whom he seized, when the prisoner No. 7, Pran Khan struck him a blow on the head with a club. This did not make him let go of his brother, when, as the eye witness depose, and as Ashoree himself depos'd immediately after the occurrence before the police *mohurrir*, Arman Sirdar, absent, speared him in the belly, he then fell, was carried home and died that night.

This is no case of affray, but a deliberate assault made by a large party upon the prosecutor and his brother, by whom no opposition was offered. The prisoner No. 6, in the *mofussil*

* Vide Nizamut Report, page 845.

said, he was at the *Bankaye cutcherry* belonging to Ram Rut-tun at the time of the occurrence. Before the magistrate he pleaded that he was at home, some two days distant, and made the same defence in the sessions court. Three witnesses were examined to this particular point, their evidence, is clearly worthy of no credit. We convict him of being an accomplice in the murder, and confirm the sentence which the sessions judge proposes to be passed upon him."

The guilt of the prisoner rests on the same evidence, as that which has been pronounced good and sufficient for the conviction of the other prisoners, tried upon the same charge.

The defence of the prisoner was an *alibi*.

His witnesses depose to having seen him the night preceding the morning of the affray, in the village Muslobapore. This place is not three hours' journey from the scene of the affray, and even if every credit be allowed to the evidence in his favor, it fails altogether to exculpate him.

The verdict of the law officer finds him guilty of riot attended with culpable homicide. But upon the grounds of my finding in the case of the prisoners formerly referred, and in accordance with which they were sentenced by the superior court, I hold the prisoner guilty of being an accomplice in wilful murder, and recommend a sentence of fourteen years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Baronet and Mr. H. T. Raikes.) The evidence against the prisoner is clear, and proves that he, with others already convicted, was an accomplice in the murder of Ashorce who on his death-bed named him. We convict the prisoner, his plea of *alibi* failing altogether, and sentence him to (14) fourteen years' imprisonment with irons and labor in banishment as recommended by the sessions judge.

1853.

July 30.
Case of
GOLUCK-
CHUNDER
Doss.

PRESENT:
J. R. COLVIN, Esq., Judge.

GOVERNMENT,

Hooghly.

versus

JOGESSUR DUTT.

1853.

CRIME CHARGED.—1st count, under Section 1. of Act XIII. of 1850, with the embezzlement of the sum of Company's Rupees 28-9-2, being part of the government revenue of the *khas mehal*, No. 1348, *Kusbah Pondooa*, with the receipt of which the prisoner was entrusted by reason of his employment as government *tehsildar* of the said *mehal*, the said sum of Co.'s Rs. 28-9-2, having been embezzled on five distinct dates, from the earliest to the latest of which dates, a period of less than six calendar months elapsed; 2nd count, under the said Act with theft of the said sum of Co.'s Rs. 28-9-2.

GOVERNMENT CRIME ESTABLISHED.—Embezzlement of Rs. 28-9-2, being part of the public revenue of the *khas mehal*, No. 1348, *Kusbah Pondooa*, with the receipt of which he was entrusted by reason of his employment as government *tehsildar*.

Committing Officer.—Mr. C. T. Buckland, magistrate of Hooghly.
Appeal rejected.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 17th March, 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with the embezzlement of Co.'s Rs. 28-9-2, being part of the public revenue of a resumed estate held under *khas* management, with the collection and receipt of which he was entrusted by reason of his employment as government *tehsildar*. The commitment is made under the provisions of Act XIII. 1850, and the prisoner arraigned on five distinct acts of fraudulent appropriation, committed within six calendar months. The evidence against him is both oral and documentary, and consists in the verification of the receipts signed, sealed and delivered by him for revenue paid in, and the attestation of the accounts prepared by him, which fail to shew the credit entries of those sums. The prisoner denies the charge and makes a rambling irrelevant defence. He admits that part of the sum collected was not carried to credit by his assistant, who transacted business for him, during a period of temporary indisposition, but subsequently made good from his own resources, and that the remainder of the monies alleged to be embezzled by him was duly credited to the state and entered in a separate *chalan* in 1258, as payments made in 1256, and begs reference to the

seha and *hoka* accounts and receipt book forwarded by him to the Collector in proof of his pleas. This is a mere subterfuge on the part of the prisoner. He is well aware that the Collector has notified in a proceeding, that no receipt book is forthcoming and that the *jumma-wasil-bakee* accounts which prove the deficiency are prepared, as is the custom, from the *seha* and *hoka* papers. Besides, by his own shewing the repayments he pleads were made in 1258, whilst the embezzlement took place in 1256. The *futwa* of the Law Officer convicts the prisoner on violent presumption of embezzlement; thereby causing deficiency in the public treasury, and declares him liable to discretionary punishment by *tazvir*, and I concur in the finding.

Sentence passed by the lower court.—Imprisonment with labor for five (5) years.

Remarks by the Nizamut Adawlut (Present: Mr. J. R. Colvin).—The petition of appeal of the petitioner is only a repetition of his pleas on the trial. The payments made to him, and the authenticity of the receipts are well established, and I see no ground to doubt the propriety of the conviction and sentence.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MUTHOOR MOOCHEE,

versus

BECHOO DULLOOYE (No. 1), CHUNDY CHURN MULLICK (No. 2), KANGALI BAGDEE (No. 3), AND SURROOP BAGDEE (No. 4).

CRIME CHARGED.—1st count, dacoity and plunder of property value Rs. 42-15, belonging to the prosecutor; 2nd count, having in their possession a part of the property plundered, knowing it to have been acquired by dacoity.

Committing Officer.—Mr. E. Jenkins, magistrate of Howrah.
Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 14th of July, 1853.

Remarks by the sessions judge.—The prisoners are charged with dacoity and receiving property, knowing it to have been acquired by plunder, and plead “*not guilty*” to the indictment.

The substance of the prosecutor’s statement is, that a gang apparently of ten or twelve dacoits attacked his house, dragged him from the room in which he was sleeping, by his hair, and threatened to kill him if he made any noise or gave the alarm, and that some of the party then went to the apartment occu-

1853.

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Case of
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DUTT.

24 Pergun-
nahs.

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others.

The prisoners
were convicted
of dacoity and
sentenced to
imprisonment
with labor and
irons in ban-
ishment for
sixteen years.

1853.

pied by his nephew and bound him. It goes on further to shew that the prisoner Surroop Bagdee seized the father of the prosecutor, and, on his refusing to point out the property, struck him a blow with a *kuthan*, or bill, across the head, to the effusion of blood, and that the prisoner Kangali Bagdee burst open the door of another room, and desiring the gang to go in and plunder, kept watch between that apartment and the outer gate. These events were witnessed by the light of four torches ; the prosecutor adds, and says that during their progress the darogah came up with a body of police and arrested the prisoners, Bechoo Dullooye and Chundy Churn Mullick, with several articles of the plundered property while attempting to escape after scaling the outer enclosure wall. It further appears from the deposition, that these persons then and there made a confession of crime, and implicated the prisoners Kangali and Surroop who were apprehended forthwith, and in their houses were found brass vessels identified by the prosecutor as his property. There are some inconsistencies between the prosecutor's statement here and before the magistrate, but I am not disposed to regard them with strictness, as they are immaterial, and do not affect the main facts represented.

The father of the prosecutor describes the attack made on his house, and distinctly identifies the prisoners Kangali and Surroop, the former of whom he says bound him, and the latter wounded him on the head with a *kuthan* for refusing to tell where the valuables were kept.

The nephew of the prosecutor, after detailing the onset of the dacoits, describes how he was pinioned by two of the gang and how others maltreated his uncle. He deposes to having recognized the prisoner Kangali, while giving the orders to plunder, and to have seen the prisoners Bechoo and Chundy Churn arrested together with articles of property, while escaping from the premises. He speaks also to the admissions made by these persons before the darogah, immediately on their apprehension, and the consequent arrest of the prisoners Kangali and Surroop, in whose houses were found four brass utensils identified as the prosecutor's property.

The evidence of the police darogah Bukkaulah, which next ensues, is most complete and discloses, in a clear and distinct manner, the whole particulars connected with the dacoity, the recognition and arrest of the prisoners and the finding of the stolen property on their persons, and in their houses. He says that while the magistrate was in camp lately, in the interior of the district, he was sent for by that functionary and formally introduced to the prisoner Kangali Bagdee, as a person who had undertaken the office of informer and promised faithfully to discharge its functions. On learning the pri-

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soner's name, with which he was not acquainted before the interview, the *darogah* remarked to the magistrate that the prisoner's reputation as a *dacoit* was notorious, and that he unquestionably possessed the means of giving good information regarding dacoities if he "choose to exercise it. The magistrate then desired him, the *darogah*, to attend to all communications made by the prisoner and to bring him to the station, the moment he made any disclosure regarding dacoities about to be committed. One day the prisoner came to him and communicated that a dacoity was in contemplation, and the preliminaries in process of adjustment. The *darogah* took him to the magistrate and that officer recorded, with his own hand, the statement the prisoner made, which he delivered to the *darogah* with instructions to be watchful. Kangali was then dismissed, and desired to make all further disclosures to the *darogah*. One day in *Bysack* last, he informed the *darogah* of a meditated dacoity and desired him to have all his people in readiness. The *darogah* did so, and mustered so strong a party as he could get together, but the prisoner came late in the afternoon, and told him that the affair was postponed. Two days afterwards he made a similar communication and the *darogah* arranged his plans, but a second postponement was announced. On this occasion the *darogah* rebuked him sharply, for having twice deceived him and desired him to make no further communications, unless upon the most authentic and precise information. He then told the *darogah* that he might implicitly rely on his next intelligence, which would be communicated either by himself, his brother, the prisoner Surroop Bagdee, or one Riechurn, a *chowkeedar*. On the afternoon of the 3rd *Bysack*, Riechurn came and informed the *darogah* that it was settled that the house of Bhujohuri Banerjea of Janpurdeh was to be attacked during the night, and that he was commissioned by Kangali to advise the *darogah* to move on his party to the Rajapore *phanri*, and there to await the arrival of Kangali and his brother Surroop. The *darogah* did so and waited in vain for the prisoners to a late hour, but seeing the moon about to set and fearing treachery from Kangali, made a move on Janpurdeh and fortified the Banerjea's house to the best of his ability. While awaiting at their posts, the *darogah's* party heard the din and uproar of a dacoity in another direction across a *nullah*. They immediately repaired to the spot and fortunately arrived in time, to apprehend the prisoners Bechoo and Chundy Churn, with part of the plundered property as has already been shewn. The *darogah's* evidence further proves the mofussil confession of the prisoners Bechoo and Chundy Churn, the arrest of the prisoners Kangali and Surroop on those confessions, and the

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1853. finding in their houses of four articles of the plundered property.

July 30. I have to apologize for giving this testimony so much in detail, but I was so pleased with the fulness of the information it conveyed, and regarded it as such a complete exposition of the whole particulars of the dacoity, and the atrocity of the prisoner Kangali's conduct, that I could not resist doing so.

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The evidence of Keenie Singh and Nubin Rae, *bukundazes* of the Howrah police, goes to prove the arrest of the prisoners Bechoo and Chundy Churn in the act of flight with some of the stolen property. They formed part of the *darogah's* force and accompanied him from Janpurdech to the scene of the dacoity, on hearing the alarm while guarding the brahmin's house.

The remaining witnesses for the prosecution prove and attest the confessions of the prisoners, Bechoo and Chundy Churn, made before the police and the magistrate. The confessions, with a trifling exception or two, are consistent throughout and clearly and emphatically disclose the fact, that the prisoners Kangali and Surroop induced the prisoners to participate in the dacoity and, bringing them from their houses for that purpose, entertained them until it was time to go forth on the expedition.

The prisoners Bechoo Dulloooye and Chundy Churn Mullick repudiate their confessions and affirm, that they were made prisoners unlawfully while proceeding to Calcutta, where they ply as laborers and carriers. The former calls witnesses to prove that he works in Calcutta, and the latter that he was arrested while going there. Two witnesses were examined on behalf of Bechoo, who fail to substantiate his plea. No witnesses appeared on the part of Chundy Churn.

The prisoners, Kangali Bagdee and Surroop Bagdee, state that they were with the *darogah* on the night and at the time the dacoity took place. Both call witnesses to prove that the property found in their house belongs to them, and the latter that the *darogah* dismissed him on the morning after the dacoity. Four persons appeared as witnesses on their behalf, and distinctly disproved the pleas set up in defence.

I have no doubt of the guilt of the prisoners and deem them deserving of the severest punishment. I have therefore passed a sentence of fourteen years' imprisonment with labor in irons in banishment and two years more in lieu of corporal punishment, on the prisoners Bechoo Dulloooye, Chundy Churn Mullick and Surroop Bagdee, I consider the guilt of the prisoner Kangali Bagdee of the deepest dye, under the circumstances of his employment as a regular informer, and regarding him moreover in the light of an unscrupulous and hardened desperado,

whom it would be dangerous again to let loose on the community, recommend that he be sentenced to transportation for life, confirmation of which sentence is the object of the present reference.

It is scarcely necessary to add that the sentence against the BECHOO DUL-
other prisoners will remain in abeyance, until the receipt of LOOYE and
the court's final orders on the case referred. Great credit is others.
due to the magistrate and the *darogah* of Rajapore, for their
respective proceedings in this matter.

Since writing the above, I have received a letter from the magistrate of Howrah, No. 484,* of the 18th instant, with

* Letter No. 484, dated the 18th July, 1853, from Mr. E. Jenkins, magistrate of Howrah, to the officiating additional sessions judge of the 24-pergunnahs.

I beg to be allowed to supply an omission in the records of the original

* Muthoor Moochee, versus Kangali Bagdee and others. proceedings as per margin* forwarded to your court with the calendar of commitment No. 1, of May, 1853.

When on my last annual tour of inspection to my several police *thannahs*, I was at that of the *thannah* Rajapore, I found several gangs of local *dacoits* were committing depredations, with considerable impunity and little probable risk of conviction, for the prosecutors in many cases declined to prosecute or give even a list of the property they were deprived of. Having good reason to believe this unsatisfactory state of things was to be ascribed, as much to the pusillanimity of the villagers and the daring character of the *dacoits*, and their known system of threatening parties once victimized by them to a repetition of their violence in the event of their prosecuting them at the courts, as to any want of confidence in the integrity or energy of the executive police, I resolved to try and inspire an active and well-grounded suspicion among the dacoits themselves, that members of their community were in my pay, and would ultimately secure their conviction through a well-organized system of paid informers. With this view I selected out the party now under commitment, Kangali Bagdee, I knew him to be quite (to use the vernacular expression) a *puckha* dacoit, I have long watched him, and my local police have repeatedly had the strongest suspicions of his being the leader of several gangs who committed dacoities, but full evidence to commit on any charge for trial was hitherto unprocurable. I selected him therefore as a fit person to render the aid required of an informer, fully acquainted him with the nature of the duties expected of him, paid him on the 9th February, 1853, Co.'s Rs. 6 (six) as immediate subsistence allowances† and obtained the sanction of the superintendent of

[†] Regulation XVI. 1810, C. O. Nos. 93 and 78, of volume I.

police lower provinces to the disbursement as shewn in the accompanying transcripts of the letter and bill on the subject. After about a month's delay as will appear in the records of the original proceedings, this Kangali pretended to bring to me trustworthy information, and the necessary orders to the police upon it were issued. The result of the whole proceedings I trust may be now clearly proved before you that this Kangali with the utmost deliberation, dishonesty and breach of faith, attempted to impose on the police, who he was engaged to assist in bringing to justice certain parties he mentioned

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enclosures, all which I transmit in original for the court's perusal. They furnish further evidence of the perfidiousness and treachery of the prisoner Kangali Bagdee's conduct, tho

were clubbed together to commit a dacoity in the house of a party whose name and place of residence he had beforehand specially mentioned. As this Kangali's knavery is only equalled by his impudence, I trust, if the court is pleased to consider him guilty of the charge against him, his sentence may equal in severity, the heinousness of the charges he may be convicted of.

Letter No. 326, from Mr. E. Jenkins, magistrate of Howrah to W. Dam-pier, Esq. superintendent of police, lower provinces.

I beg to report having this day committed to the sessions court the prisoners and case as per margin [‡]. The dacoity

^{versus} Muthoor Moochee,

1. Bechoo Dullooye,
2. Chundy Mullick,
3. Kangali, and
4. Surroop

Charge.

Count 1, dacoity and plunder of property value Rs. 42-15; count 2, having in their possession a part of the plundered property knowing it to have been acquired by dacoity.

Crime occurred on the 14th April, 1853.

Charge preferred on the 15th ditto.

of persons he named, being in league and agreed to commit a dacoity, further mentioning the village he thought it would be, though he could not tell the house. I deputed the *thannah* police to be on the look out, nothing occurred at the time, but some days after the informer sent word to the *darogah*, to be in readiness and located them at a village where he assured him the dacoits would come. The police waited some hours and at last were surprised to hear the uproar of a dacoity being committed some two villages distant, near quarter coss from where they were. They hastened to the spot, and on their way seized the prisoners Bechoo and Chundy who confessed to the crime and assured the *darogah*, Kangali and Surroop had got them to join in the dacoity, had committed it themselves and were now off to conceal the property. These confessions are confirmed again before me. The police then immediately went in search for Kangali and Surroop, and after a little delay apprehended them at their houses some distance off. Some of the plundered property was found concealed in their houses. They both deny the charge, but can say nothing in answer to the disclosures made in the other prisoners' confessions. The prisoner Kangali evidently hoped to have played successfully the double game of informer, and yet the party benefited by the plunder. Had the police been less expeditious in following him he would afterwards have appeared, given information that might have led to the apprehension of some of the less influential of his associates, and so gained a celebrity for quick-sightedness in his village

lawlessness and depravity of his former life, and the necessity of keeping him under perpetual restraint.

1853.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.—The prisoners asserted before the magistrate, that they were with the *darogah* during the night of the occurrence, and Kangali said that as the dacoity originally planned could not come off, as the dacoits were too few in number, he, with the connivance of the *darogah*, had set the gang on the prosecutor's house, and then helped to apprehend the prisoners Nos. 1 and 2. It is no great matter of wonder, that such a known bad character should endeavour to mislead the police, but it surely is matter of surprise, that he should be fool enough to commit a *dacoity*, close to the very place, which he himself had pointed out to the *darogah* as the intended scene of operations. While however the prisoners are unable to bring forward any exculpatory evidence, the proof against them is very strong. The prosecutor and two other persons who lived in his house recognized them, and have sworn to this fact consistently from first to last; the property found in their houses is identified for the prosecutor, and the two prisoners, who confessed in the mofussil and before the magistrate, name Kangali and Surroop as the leaders. I concur therefore in the conviction, but I see nothing in the circumstances to require that the punishment should be heavier in the case of Kangali than in that of the other prisoners; he has never been before convicted, and punishment is to be awarded with reference not to his dishonesty or breach of faith, but to the share he took in the dacoity. The evidence shows that Surroop drew blood with a *kuthan* from the head of one of the inmates, and I do not think that Kangali can justly be subjected to a heavier sentence, than that passed upon Surroop. The punishment awarded by the sessions judge in this case is heavy, but as *dacoities* still continue to be of frequent occurrence in the districts round Calcutta, I conclude that he believes severity to be necessary, I shall not therefore interfere.

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BECHOO DUL-
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which would have secured to him endless profits. It is to be remarked moreover, that the names he gave to me of the parties leaguing to commit a dacoity were all fictitious, such parties we have since discovered not being at all in the dacoity were all fictitious. Three of the police *bukundazes*, Nobin, Khandarry and Korban, afforded the *darogah* quick aid in securing the prisoners. I would solicit your sanction to a reward of Rs. 16 each being paid to them.

SUMMARY CASES.

PRESENT:

SIR R. BARLOW, BART.,

J. R. COLVIN, AND J. DUNBAR, Esqs., *Judges, and*H. T. RAIKES, Esq., *Officiating Judge.*

Rajshahye.

1853.

PEAREE PESHAGUR,

versus

SEETUL SIRDAR (No. 1,) FUTTEEK SIRDAR (No. 2,) KETHABDEE SIRDAR (No. 3,) AND MULUNG SIRDAR (No. 4.)

July 27.
Case of
SEETUL SIRDAR and others.

This case was referred to the Nizamut Adawlut, under Section 5, Act 31 of 1841, and Circular Order dated 18th March, 1842, by Mr. G. C. Cheap, sessions judge of Rajshahye, on the 10th May, 1853, with the following report.

The prisoners, it will be seen, were sentenced by the officiating joint magistrate of Pubnah, on the 30th of August last, respectively to one year and a half, one year and to six months' imprisonment, with labor and irons, for a theft committed in the house of the prosecutrix.

On their appealing and the case being heard, I considered there was no theft, the circumstances of the case clearly shewing it was one of those forcible outrages so common at Pubnah, and coming under the denomination of *loot turajee* or plundering.

The prosecutrix had been formerly living with the prisoner No. 1, as his concubine, and had left his house and the probability is (though the prisoners plead not guilty throughout) that he, together with his brothers, to resent her leaving him, went to her house and carried off a *petarrah* containing some articles that the prisoner No. 1 had given her to wear.

She herself has so shifted the value of these things, that it is impossible to say what was their real value, and, except a capital one, that they were seen carrying off a *petarrah*, there is no proof of the articles stated having been taken by the prisoners.

Doubting therefore that there was any theft (there being nothing *stealthy* in the proceeding) I, on the 20th September last, quashed the joint-magistrate's conviction and directed him to pass a proper order in the case.

On the 30th of September he, without recording any thing further for his opinion, and without any reference to this court, upheld his first order; and on my visiting the jail the prisoners again appealed, but on this occasion after the time

In stealing from a house there must, under the Mahomedan law, be a secret entry into the house by night, though a subsequent violence after a stealthy and clandestine entry will not take away the character of the theft.

The penalty of tazeer, which may be inflicted in a case of plunder may reach to any sensible short of

Snatching from the person is not

theft, if openly done: it may be a minor form of highway robbery, or a miscellaneous offence punishable by tazeer.

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for appealing had elapsed, I therefore cannot disturb the sentence passed upon them.

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Case of
SEETUL SIR-
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others.

Being *still* of opinion there was no theft (as the prosecutrix did not complain of theft, the police reported no theft had taken place, and when called upon to plead, the prisoners were not *at first* asked if they had committed theft) I again think the conviction should be quashed, and as one of them has undergone his sentence and been released, should the court concur with me, that there has been no theft or stealing from a dwelling house, I would suggest that the other three prisoners should be released also. No. 1, may have been the mover in the business, but the offence of all was the same; and I do not see how any distinction could be made as to the measure of punishment.

To quash the conviction, and again to leave it to the joint-magistrate to pass a fresh order, may only lead to his again upholding his former one. For having once shewn so little deference to the opinion of the appellate court, it may be doubted if he will be guided by the opinion of still higher authority; and on a recent communication to me he stated, "I need only remark that I consider myself bound, as a judicial officer to try every case according to its merits, as apparent in itself, and to be guided in my decision by that which in *my own* judgment appears to be established. I should, as I think, fail in my duty if I were to allow my judgment to be guided by the mere opinion of another court, even though the appellate authority rests thereto."

A copy of the above letter has been forwarded to the officiating joint-magistrate, but as he proceeded into the mofussil on the 2nd instant and ten days have elapsed since the reference was directed to be made, I submit the proceedings now, and on the receipt of the joint-magistrate's explanation, it will be forwarded.

Resolution of the Nizamut Adawlut, No. 523, dated 17th May, 1853. (Present Mr. J. R. Colvin.) The court, having perused the papers above recorded, observe that they cannot decide on this reference without having before them the explanation of the officiating joint-magistrate. The sessions judge should have awaited the receipt of that explanation, calling for its early transmission in the event of any unusual delay in its receipt.

The officiating joint-magistrate might very probably wish to refer to the record on preparing his explanation. The sessions judge ought, therefore, not to have sent off the record to this court before hearing from Mr. Beaufort.

The record will be immediately returned, that the officiating joint-magistrate may have the means of referring to it, should

he desire to do so. The case is, for the present struck off the file of this court.

1853.

Resolution of the Nizamut Adawlut. No. 552, dated 27th May, 1853. (Present: Mr. J. R. Colvin.) The court having perused the papers above recorded, connected with the case of Seetul Sirdar and others, observe that, the sessions judge having quashed the first conviction of the officiating joint-magistrate on the one ground, that the facts of the case did not show that the offence of *theft* had been committed, it was not competent to the officiating joint-magistrate to disregard the legal opinion of his superior officer, and to punish the prisoner, in reference to the same admitted facts, upon his own opinion, that the offence was properly to be considered as *theft*.

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Case of
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others.

The officiating magistrate ought, if differing from the sessions judge on the point of law, to have acted according to the provisions of Regulation 10, 1796, and to have requested a reference to this Court in the manner there laid down.

His conviction and sentence on the prisoners, Seetul Sirdar, Futeek Sirdar and Katabdee Sirdar, are therefore annulled. Should he think fit to hold further proceedings with a view to a fresh sentence on the prisoners, he will act in the manner above pointed out.

The sessions judge and the officiating joint-magistrate are referred, on the point of difference between them to Harington's Analysis, volume I, page 273, as showing what is required for a conviction of *theft* under the Mahomedan law.

Reply of the sessions judge of Rajshahye, No. 58, dated 16th July, 1853.

On the receipt of the Court's resolution No. 523, of the 17th of May, it, together with the *soujdaree* proceedings, were sent to the joint-magistrate, on the 30th of May, for any further explanation he might wish to make, and he was requested to return the resolution and the proceedings.

On the 1st of June, the Court's resolution No. 552, of the 27th of May was received, and was also sent to the joint-magistrate on *that date* with a letter in which I stated, that if he had not got Harington's Analysis he would find what the court referred to quoted nearly verbatim in Mr. Beaufort's Digest of Criminal Law, page 610.

On the 6th of June, I received a letter from the joint-magistrate dated the 2nd idem, returning the proceedings, when I replied. "You must have had the second resolution of the Nizamut Adawlut in which they annulled your sentence, and directed you to pass a proper order."

I also informed him the prisoners had appealed again from his order, "but there was some delay in taking up their appeal

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from the pressure of other business" and I concluded; "If you had intimated to me that you saw no reason to alter the opinion you first entertained, all this useless correspondence would have been avoided. I should have at once released the prisoners, I return your record of the case."

It now appears that the record of the case was not returned, though the head clerk was informed it was to be sent, (and must have seen it was so from the concluding sentence of the letter copied by him.)

On this being intimated to me by the joint-magistrate, on the* 13th, I addressed a letter in answer dated the 14th, (a copy of which is enclosed) which has drawn forth a rejoinder, also enclosed.*

I have consulted both Mr. Skipwith's Guide and Mr. Beaufort's, but I cannot find that I have any authority to interfere in the case.

Skipwith in paragraph 1308 says, "a sessions judge may cancel any order given by a magistrate that may appear improper or unjust, and dismiss charges pending before a magistrate when manifestly unfounded ?" He cites his authorities and I see I have put "query" in the margin against the above remarks, and have underlined them with pencil.

Beaufort is silent on the subject; and nothing in Section 2, Act XXXI. of 1841,† would authorize such an interference, unless the party in *jail* or *hajut*, presented a petition of appeal to the sessions judge. The appeal by the petitioners was referred to the superior court, who disposed of the case. I could not, therefore, originate the matter again or revive the appeal.

The only order I could issue, would be under Clause 1, Section 2, Regulation VI. of 1818, cited both by Skipwith‡ and Beaufort,‡ but here again there must, I conceive now, be some petition of appeal. In the case of some persons who had been lying in *hajut* for months, charged with the murder of a person unknown, I called for the proceedings on a petition given by the prisoners and directed the joint-magistrate, Mr. Fletcher, to close his proceedings and either to commit or acquit the prisoners, but that was a case in which the magistrate could not have passed sentence on the accused.

In the present one the joint-magistrate is competent, but sees no reason to change his opinion; and though I should, if convinced, readily have changed mine, I cannot find a *vestige* of evidence to support a conviction of theft, and if the court

* Note. Not printed.

† Paragraph 1279. ‡ Paragraph 1317.

will only take the trouble to peruse the proceedings, I am inclined to think they will be of the same opinion.

To the fact, or outrage complained of, there is no evidence but that of the prosecutrix, who, in her petition to the joint-magistrate, in her deposition made before the *thannah mohur-rir*, and in her second deposition before the joint-magistrate, does not mention one word about theft. "*Takt khanna*" is the expression, one invariably used by persons who wish to represent that their houses have been forcibly entered and plundered, and which the law officers of the Nizamut Adawlut have defined to be "*gusub*," and not "*sarika*" in their answers to the questions put to them by the court, and cited in their Circular Order, of the 9th March, 1852, No. 80, volume IV.

I beg therefore, as requested in the 2nd paragraph of the joint-magistrate's letter, No. 167, of the 7th June last, again to submit the record of the case for the orders of the court, to decide whether the offence charged, as well as proved against the prisoners amounts to theft or not.

And as this is not the only question, but it will have to be decided how the prisoners are to be disposed of, and some rule of practice laid down, I think it would be more satisfactory if the court at large were to accord their opinion on the questions mooted in this letter, and now referred for their decision and orders.

Resolution of the Nizamut Adawlut, No. 846, dated 27th July, 1853.

The court, having perused the papers above recorded connected with the case of Seetul Sirdar and others, observe that the reference is before them, as a reference under Regulation 10, of 1796, merely to determine whether the acts, proved against the prisoners, constitute the offence of theft under the Mahomedan law, and are punishable under the penalties for theft declared in the Regulations, or whether they are to be classed under the general offence of violence and plundering and are punishable under the head of Tazeer, according to Section 19, Regulation 9, of 1807, and Clause 7, Section 2, Regulation 53, of 1803.

Mr. Beaufort gives his reasons, in his letter No. 167, of the 7th ultimo, (one of the enclosures of Mr. Cheap's letter above recorded) for regarding the acts as theft under the Mahomedan law. It appears to the court, that he is clearly wrong. He had, it would seem, Harington's Analysis (page 273,) before him, and yet argues that the 'secrecy' required consisted in doing the act 'under the cover of darkness.' But it is plain that there must, to make the offence *theft*, be a *secret entry* into a house by night, though, if the commission be during the night, a subsequent violence, *after a stealthy and clandestine entry*, will not take away the character of theft.

1853.

July 27.
Case of
SEETUL SIR-
DAR and
others.

1853. The present case was of open force, and should have been so dealt with, and punished.

July 27. The joint-magistrate is quite in error in supposing (see paragraph 7, of his letter No. 163, of the 2nd ultimo), that theft is necessarily a more serious crime than violence and plundering, and subject to more severe penalties. The penalties of Tazeer may reach (see Section 7, Regulation 53, 1803), to any sentence short of a capital one. The powers of a *magistrate* in regard to the punishment of such cases by *his own authority*, are, of course, limited by Section 19, Regulation 9, 1807.

Snatching from the person, to which Mr. Beaufort refers, is not theft, (under the Mahomedan law,) *if openly done*. It may be a minor form of highway robbery, if committed on the highway, or it may be one of the miscellaneous offences, punishable by Tazeer under that law.

The court are of opinion that Mr. Beaufort has not shown any sufficient grounds for contesting the view of the sessions judge, and making the present reference for its decision.

Adverting to the fact of the prisoners Seetul Sirdar, Futeek Sirdar and Kethabdee Sirdar having undergone imprisonment with labor and irons for the greater part of the time, since the date of their original sentence by Mr. Beaufort, on the 30th of August, 1852, the court direct that they be now discharged.

The Court observe that the sessions judge was to blame, in not making the reference on the legal question to the Nizamut Adawlut, immediately on the receipt of Mr. Beaufort's letter No. 167, on the 7th ultimo.

PRESENT:
J. DUNBAR, Esq., Judge.

BISHOO MUNDUL AND GOVERNMENT

versus
HINGHUN SHEIKH, (No. 1) AND ZENAH SHEIKH
(No. 2.)

CRIME CHARGED.—1st count, dacoity attended with personal injury in the house of the prosecutor, Bishoo Mundul, in which property valued at rupees 90-6 annas was plundered, and 2nd count, receiving and keeping in their possession, part of the property, knowing it to have been obtained by the said dacoity.

CRIME ESTABLISHED.—Dacoity, and receiving and keeping in their possession plundered property, knowing it to have been acquired by dacoity.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 31st May 1853.

Remarks by the officiating additional sessions judge.—The dacoity was committed by a gang of about twelve persons, but it was characterized with boldness and attended with personal injury to the inmates of the prosecutor's house, a guest having been struck on the arm with a bludgeon to the effusion of blood, his sister's underlip showing a similar proof of violence, and he himself having been roughly handled and beaten by the dacoits. Much expedition appears to have been used by the gang in the work of plunder, as they succeeded in carrying off property to the amount nearly of rupees 100, before the villagers could collect and confront them. The latter however followed them to a short distance, but did not succeed in coming up to them. The prisoner, Hinghun Sheikh, was taken up on suspicion, apparently, of the prosecutor, and the prisoner, Zenah Sheikh, on the admissions of the prisoner, Hinghun. When arrested both the prisoners confessed before the police, but the prisoner, Zenah, repudiated his mofussil confession before the magistrate; not so the prisoner, Hinghun. On the house of the latter being searched a wadded coverlet was discovered, which the prosecutor claimed as his property, and which was admitted to be such by the prisoner, and plundered on the occasion in question. None of the stolen property was found in the house of the prisoner, Zenah, but at a short distance from it, under a heap of rubbish and cinders, in a spot indicated by prisoner, were discovered two brass *thalees* belonging to the prosecutor which the prisoner removed with his own hands. In denying his confession before the lower court, he claimed these vessels as

NUDEEA.

1853.

August 1.
Case of
HINGHUN
SHEIKH and
another.

Two prisoners convicted of dacoity and receiving plundered property, sentenced to sixteen years' imprisonment. Appeal rejected.

1853.

August 1.
Case of
HINGHUN
SHEIKH and
another.

his own, and called three witnesses to prove his assertion, but they denied all knowledge of the fact, and fairly disproved the plea. Before this court he made a similar attempt with the like result. Both the prisoners cited witnesses to character but their testimony availed them nothing, the evidence being against them rather than in their favor.

Sentence passed by the lower court.—Imprisonment in banishment for fourteen (14) years, and in lieu of stripes two (2) additional years, total sixteen (16) years each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The conviction is good, and the court see no reason to interfere with the sentence.

PRESENT:
J. DUNBAR, Esq., Judge.

NARAIN JANAH

versus

KEUN ALIAS SUDOOR DULLYE (No. 12), JADOO BEHRA (No. 13), MADHUB DULLYE (No. 14), KARTICK DEHAREE (No. 15), AND CHYTUN SINGH (No. 16).

MIDNAPORE.

1853.

August 2.
Case of
KEUN alias
SUDOOR DUL-
LYE and
others.

Five prisoners convicted of attempt at burglary attended with wounding and sentenced one to fourteen years' imprisonment, and the others to ten years, imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, Nos. 12 to 16, attempt at burglary accompanied with wounding, in having made a hole in the wall of the prosecutor's house, wounded prosecutor and his brother, witness No. 13, and 2nd count, aiding and abetting in the above.

CRIME ESTABLISHED.—Attempt at burglary attended with wounding.

Committing Officer—Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 7th May 1853.

Remarks by the sessions judge.—On the night of the 8th March, a gang of thieves endeavoured to break into the house of the prosecutor. He was aroused from his sleep by the noise; armed with an axe and accompanied by his brother, the witness, Gopee Jana, No. 13, he went to the corner of the house, where six or seven men were standing; a scuffle ensued in which the prosecutor inflicted a wound on one of the robbers. The weapon in his hand was then snatched from him and he received some severe wounds on the face and body; his brother was also struck and wounded, and both became insensible. The following morning the thieves were traced by the witness, Madhoo Buxshee, No. 1, and others to a village, a coss distant; on entering it they saw the prisoner, Sudoo Dullye, No. 12, running out of it, they pursued and caught him, and on his person were marks of blood and of a wound in his left hand.

On being required to explain how they came there, he admitted that he and others, whose names he specified, had attempted to break into the prosecutor's house and had been wounded. The other prisoners were found concealed in the house of Narayn Doja in the same village, and when arrested, it was found that the prisoner, Madhub Dullye had an incised wound on the wrist from which blood was flowing, and which he tried to conceal with a piece of cloth. Before the darogah the prisoner, No. 12, Sudoo Dullye, No. 13, Jadoo Behra, No. 14, Madhub Dullye, No. 15, Kartick Deharee and No. 16, Chytun Singh, confessed and stated, that they had gone to rob the prosecutor, and were in the act of breaking through the wall of the house, when they were interrupted by the prosecutor who wounded Madhub, and that they then made their escape. The prisoners, Nos. 13 and 15, repeated their confessions before the magistrate. In this court they all plead *not guilty*, and set up an *alibi*, in defence. The evidence of the sub-assistant surgeon proves, that both the prosecutor and his brother have been severely wounded with some sharp cutting instrument, and that the injuries did not prove mortal, only because they did not touch or interfere with any vital organs. The severity of the wounds cannot be doubted, as after having been under medical treatment for two months, they are not yet healed, though no dangerous results are now likely to ensue from them. The prisoners' confessions are fully corroborated by the evidence. The manner in which they armed themselves with a sword and axe is presumptive of the nature of the resistance they intended to make, if opposed; and the wounds inflicted on the prosecutor and his brother are evidence that their intention was fully carried out, and that they were quite reckless of what the consequences of their resistance might be. The prisoner, Madhub Dullye, is a notorious character, and was only released in August 1852 from jail, where he had undergone a sentence of ten (10) years' imprisonment for burglary. He appears to have been the instigator and chief actor in the attempt at robbery, with which he is now charged. The assessors declare the prisoners, Nos. 12, 13, 14, 15 and 16 guilty of the 1st count of the charge and, concurring in this verdict, they are sentenced as indicated in the statement.

Sentence passed by the lower court.—Nos. 12, 13, 15 and 16 to ten (10) years each, and No. 14 to fourteen (14) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The confessions, which agree entirely with the statement made by the prosecutor, when first examined, as to the struggle between him and his brother and the thieves, in which wounds were given and received on both sides, are fully established.

1853.

August 2.
Case of
KEUN alias
SUDOO DUL-
LYE and
others.

1853.

August 2.
Case of
KEUN alias
SUDOO DUL-
L.Y.K and
others.

The sentence of the sessions judge is confirmed. With reference to the bravery exhibited by the prosecutor and his brother, in attacking five armed men, and defeating them in their criminal purpose, with such grievous injury to themselves, these men would appear to be well deserving of a reward. I throw out the suggestions for the local authorities to act upon, if they think fit.

PRESENT:

J. R. COLVIN, Esq., }
AND } *Judges.*
J. DUNBAR, Esq., }

GOVERNMENT

versus

BAHADOOR SINGH.

24-PERGUN-
NAHS.

1853.

August 2.
Case of
BAHADOOR
SINGH.

A prisoner, confined in jail under a sentence of fourteen years' imprisonment, convicted of an assault on the jailor and sentenced to transportation for life.

CRIME CHARGED.—Violent and disorderly conduct in attempting to assault, with a square stick, the magistrate of Howrah within the jail premises, while in the execution of his duty, and striking, with the same stick, the jailor and the jail guard jemadar when attempting to arrest him:

Committing Officer—Mr. E. Jenkins, magistrate of Howrah

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 23rd July 1853.

Remarks by the officiating additional sessions judge. The prisoner, who is a convict in the Howrah jail, undergoing a sentence of 14 years' imprisonment, pleads *not guilty* to the very grave and serious charge of attacking the magistrate in the execution of his duty, and endeavouring to assault him with a stick, and striking, with the same weapon, the jailor and jail guard jemadar, when attempting to arrest him.

F. H. Dobson, the jailor, deposes in effect that, on the 14th June last, he accompanied the magistrate to the jail to witness the infliction of corporal punishment on four convicts, the prisoner included, for refusing work. When the magistrate entered the jail he desired the prisoner to show him what he had done that day, on which the prisoner was very insolent and disrespectful in his manner, saying that he would labor as much or as little as he pleased, and threw down before the magistrate the little work he had wrought. The magistrate, incensed at the prisoner's insolence, raised the stick he had in his hand to intimidate him, when the prisoner retreated into the working shed and bringing out a square piece of wood used by the convicts to wind string, rushed furiously at the magistrate to assault him. The jemadar, who was nearest to the prisoner, immediately interposed himself between that individual and the ma-

gistrate, and received several blows to the effusion of blood Senbaluck, burkundauze, then struck the prisoner a blow on the head with a *lattee* and Dobson attempted to arrest him, when he turned round and dealt him (Dobson) such a blow on the head as flattened and smashed his *sola* hat. After this a hand-to-hand scuffle took place between Dobson and the prisoner, which issued in the defeat of the latter and his being secured. The jailor represents the prisoner as a troublesome and dangerous character, always at mischief and inciting the other prisoners to wrong conduct, and states that he was on one occasion detected as the ring-leader of a party who had planned to break jail, and which design was defeated by the timely notice given by some of the other convicts.

The jemadar's evidence is in substance the same as the foregoing and tends to prove, to satisfaction, the turbulent and insubordinate conduct of the prisoner in general, and in this instance in particular.

The defence of the prisoner is, that he is an object of jealousy with his fellow convict, Setaram, who has failed to obtain the extra diet allowed him by the surgeon. He charges this individual with falsely informing against him in the matter of the plan to break jail, and accuses the jailor of unjustly reporting him to the magistrate for plotting to assault him. He states that the magistrate struck him with his stick when he entered the jail, and admits that he asked him for his authority to inflict the corporal punishment he was about to award, with the view to appeal to his superiors. His remonstrance, by the prisoners own showing, was couched in terms insolent, and insubordinate to a degree.

The *futwa* of the law officer convicts the prisoner of the crimes charged, and declares him liable to discretionary punishment by *tazeer*.

I concur in the conviction of the prisoner, and regarding his offence as a crime of the highest order, and taking into consideration that he committed it while enduring the longest period of temporary imprisonment the law prescribes for any single act of infraction, and nearly at the very outset of that punishment; impressed also with the idea from the evidence of the jail officers, and carriage and bearing of the prisoner, that he is a daring, turbulent, and reckless character, and having regard to the magistrates implied fears at his detention in a place of confinement, where he might possibly give scope to his violent and unruly disposition, recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and J. Dunbar.)—We think that the circumstances of this case are such, as fully to justify the recommendation of

1853.

August 2.
Case of
BAHADOOR
SINGH.

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Case of
BAHADOOR
SINGH.

the sessions judge. The prisoner is evidently a man of turbulent and violent character, and he rushed at the magistrate with a manifest intention to do him serious bodily harm. He struck the jemadar of the jail several blows, bringing blood, and he also struck Mr. Dobson, the jailor, a violent blow on the head, which crushed a strong sola hat; he was over-powered with much difficulty, after an obstinate resistance. He is one of five up-country men, under sentence of fourteen (14) years' imprisonment for a daring dacoity. The case calls for exemplary punishment. The *futwa* is of *tazeer*, and with reference thereto and to Section VII. Regulation LIII. of 1803, we sentence the prisoner to transportation for life.

PRESENT:

SIR R. BARLOW, BART., }
AND } *Judges.*
J. DUNBAR, Esq.,

GOVERNMENT

versus

MUDDUN CHUNDER CHATTERJEA (No. 1), RAM CHUNDER ODHIKARY (No. 2), AND WOMACHURN BISWAS (No. 3).

24-PERGUNNAHS.

1853.

August 3.
Case of
MUDDUN
CHUNDER
CHATTERJEA
and others.

One prisoner convicted of uttering a forged dakhila for 1,950 rupees, sentenced to five years' imprisonment. Two others convicted of aiding and abetting him, sentenced to three years' imprisonment.

CRIME CHARGED.—1st count, forgery of a *dakhila* or receipt of rupees 1,950, dated 28th Bysack 1258, purporting to be signed by Debnarain Mitter, witness; 2nd count, uttering the above instrument by filing the same in the foudarry court in the 24-Pergunnahs in the case of Mumteez Mohomed, mokhtear *versus* Muddun Chunder Chattoorjea for embezzlement, he well knowing the said instrument to be forged, and 3rd count, prisoners, Nos. 2 and 3, aiding and abetting in the crime charged against (prisoner No. 1) in the 2nd count.

Committing Officer—Mr. E. A. Samuels, magistrate of the 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of the 24-Pergunnahs, on the 25th June 1853.

Remarks by the sessions judge.—The Government was prosecutor.

The prisoners denied the charges on which they were arraigned.

Prisoner, No. 1, Muddun Chunder Chatterjea, was a gomashta employed in the mofussil in one part of the estates belonging to Moonshee Buzlool Ruheem, under witness No. 1, Debnarain Mitter, the naib. From this person's evidence it appeared that in consequence of a deficiency in the instalment of rent remitted by the prisoner, No. 1, in the month of Bysack 1259,

information was sent to the zemindar, by whose orders the witness was directed to test the collections of the gomashta ; for this purpose Shaik Fukeer Mohomed, witness No. 4, was appointed and from the result of his enquiries, rupees 1,950 and some annas were shown to have been collected, out of which rupees 1,684 being remitted, there was a total deficiency of rupees 265 and some annas, which was not denied by the prisoner, who merely observed that he had not the amount with him ; thereon, the 12th Bysack 1259, the prisoner was sent to the zemindar at Sealdah and subsequently absconded to Nuddea, and it was in the month of December last in a case instituted against him under Act XIII. of 1850, that the prisoner, No. 1, filed a receipt for rupees 1,950 which was pronounced a forgery ; the naib declares that neither the signature nor the body of the receipt are his hand-writing, and that it is not customary in his master's zemindaree to put a signature on receipts granted to gomashtas, merely the words "*sree suhee*"

Witness, No. 2, Ramdhone Sirkar, and witness, No. 3, Jyenarain Dutto, who were employed in the naib's cutcherry, corroborated his statement in every particular and further deposed, that the prisoner agreed to pay the deficiency on arriving in Calcutta.

Witness, No. 4, Shaik Fukeer Mohomed, deposed to his having tested the collections of prisoner, No. 1, and finding a deficiency of rupees 265 and some annas which the prisoner promised to make good : witness, No. 5, Shaik Nyemuddy, and witness, No. 6, Shaik Kadirbux, servants of the zemindar, deposed to the prisoner, No. 1, promising to pay the deficiency

The prisoner, No. 1, Muddun Chunder Chatterjea, declared the charge originated in spite, referred to a petition he had given to the magistrate on the 24th Jyte 1259, wishing to resign his situation of gomashta ; to the signature of the naib in two cases in the sunder moonsiff's court, one of which he declared the naib had disclaimed, though a decree was given against him, and also to his signature in the registry book. The other prisoners persisted in saying that the *dakhila* filed in the case was given by the naib.

The law officer acquitted the prisoners, because a denial of the witnesses as to the signature as well as the receipt did not amount to proof, and the absconding of prisoner, No. 1, to Nuddea, did not create more than suspicion.

I dissented from this finding, and am therefore obliged to trouble the Court with this reference. The petition mentioned by the prisoner, No. 1, was given after his collections had been tested, and the deficiency discovered, and the signatures to which he alluded as well as other signatures on various papers, were compared, and to my judgment differed materially from

1853.

August 3.
Case of
MUDDUN
CHUNDER
CHATTERJEA
and others.

1853.

August 3.
Case of
MUDDUN
CHUNDER
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and others.

the body of the receipt filed by prisoner, No. 1, in the case, as well as the signature : the fact of a signature on a receipt to a gomashta not being customary in this particular zemindaree, the warnings given from time to time by the naib to his master regarding the prisoner, No. 1, as shown by his letters, and the order to test his collections, the result, the admission of the prisoner and his promise to pay, his subsequent departure to Nuddea and the filing this receipt so many months afterwards, all lead to the strongest presumption of his guilt on the 2nd count in the indictment, as well as of the other prisoners on the 3rd count : I recommend therefore that prisoner, No. 1, Muddun Chunder Chatterjea, be imprisoned for five (5) years with labor and irons and prisoner, No. 2, Ram Chunder Odhikary, and prisoner, No. 3, Womachurn Biswas, to three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart, and Mr. J. Dunbar.)—The particulars of this case are fully reported by the sessions judge in his letter of reference. The evidence for the prosecution clearly establishes the charge on which the prisoner, No. 1, is convicted in the sessions court. The receipt put forward by the prisoner is dated Bysack 1258 ; his accounts were examined and the balance against him of rupees 258 was shown on their being closed in Bysack 1259.

The prisoners, Nos. 2 and 3, insist throughout upon the fact that the receipt, in question, was given by the witness, Debnarain Mitre to the prisoner, No. 1. They were not personally acquainted with Debnarain, who was pointed out to them by No. 1. The depositions however of Debnarain, and his amilah, the fact that the prisoner No. 1, absconded and did not produce the receipt on which he now relies, till a period long subsequent to the date on which he was charged with the embezzlement, and that he promised to make it good in Calcutta, are all strong proofs of the forgery of the receipt put forward. We convict the prisoner, No. 1, of uttering the forged deed and the prisoners, Nos. 2 and 3 of aiding and abetting in the same, and sentence them as proposed by the sessions judge.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND OOZEER KHAN
versus
MOHESH CHUNDER DOSS.

CRIME CHARGED.—Tendering in payment a counterfeit coin, in imitation of the silver rupee usually received as money in the British possessions in India, knowing the same to be counterfeit.

Committing Officer—Mr. E. Jenkins, magistrate of Howrah.
Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 23rd July 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with uttering a counterfeit coin and pleads *not guilty* to the indictment.

The prosecutor and two witnesses distinctly prove that the prisoner asked change for a rupee, and that the piece he tendered was a counterfeit imitation of that coin. The attempted fraud was detected immediately, and the prisoner handed over to the custody of the police, notwithstanding his entreaties for mercy and repeated offers to substitute a genuine coin for the counterfeit.

The prisoner in his defence says he is a hawker, and buys and sells old and broken ware; that he purchased some glass from the prosecutor for four annas and having no copper with him, proposed leaving the articles until he changed a rupee from a poddar hard by; that the prosecutor offered to accommodate him, and with that view received the rupee he tendered; that the prosecutor retired with the money into the interior of his house and after an absence of half an hour or so brought back a counterfeit coin, retaining the genuine, charged him with swindling and made him over to the police. To this defence, however, no witnesses are named.

The *futwa* of the law officer convicts the prisoner on violent presumption and declares him liable to discretionary punishment by *tazeer*.

I concur in the verdict of guilty, and considering the prisoner neither a coiner or practised swindler, from the fact of his attempting to pass such an awkward, ill-disguised counterfeit of the current coin which could not fail to be detected at a glance, but rather the dupe of some designing rogue, would recommend that the sentence of three (8) years' imprisonment with labor passed on him be mitigated to one and half ($1\frac{1}{2}$) year, subject to the confirmation of the court.

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NAHS.
—
1853.

August 3.
Case of
MOHESH
CHUNDER
DOSS.

Prisoner
convicted of
uttering coun-
terfeit coin,
sentenced to
one and half
years' impris-
onment, being
supposed to
be the dupe of
some practised
villain.

1853.

August 3.
Case of
MOHESH
CHUNDER
DOSS.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—I convict the prisoner of the crime charged and sentence him, as recommended by the sessions judge, to be imprisoned for one and a half ($1\frac{1}{2}$) year with labor.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

RUSSOOL MAIIOMED.

RUNGPORE.

1853.

August 3.
Case of
RUSSOOL
MAHOMED.
Prisoner
convicted of
perjury on the
point of his re-
lationship to
a defendant in
another case,
and sentenced
to three years'
imprisonment.
A fine commu-
table to labor
cannot be im-
posed as part
of the sentence
in a case of
perjury.

CRIME CHARGED.—Perjury, in having on the 5th May 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the moonsiff of Olipore, that Russool Mahomed is his name, and Doorbula, his father's name, and that he bears no relationship to Shurip, a defendant in a case instituted in his court, and on the 12th May 1853, having again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the said moonsiff, that his father's name is Bheem, and that the said Shurip is his brother, such statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 13th June 1853.

Remarks by the officiating sessions judge.—The prisoner was charged with perjury, in having on the 5th of May 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the moonsiff of Olipore, that Russool Mahomed is his name, and Doorbula, his father's name, and that he bears no relationship to Shurip, a defendant in a case instituted in his court, and on the 12th May 1853, having again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the said moonsiff, that his father's name is Bheem, and that the said Shurip is his brother, such statements being contrary of each other on a point material to the issue of the case.

1st witness, the moonsiff's peshkar, states that he wrote both depositions which were taken before the moonsiff and swears to them both.

2nd and 3rd witnesses were present on both occasions, and heard both depositions which they swear to.

4th witness is the prosecutor before the moonsiff, and knows the prisoner who is his nephew, and made the false deposition

on the 5th of May, which he brought to notice and established. He was not present at the time, but appeared by vakeel, Nund Koomar, (witness No. 2.)

The prisoner pleads guilty, but says that he was ill, and that he took *gunja* that day, did not know what he said substituting his uncle's name for his father's.

Witness, No. 6, knows nothing of his illness or taking *gunja*.

Witness, No. 7, knows nothing of his illness or taking *gunja*.

The jury consisting of Moonshee Mahomed Saleem, Brijosoonder Biswas and Kishto Bundhoo Roy, return a verdict of guilty, in which I agree, and sentence accordingly.

Sentence passed by the lower court.—Three (3) years' imprisonment and a fine of thirty (30) rupees, in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The crime charged is clearly established. The prisoner endeavours to exculpate himself by saying that he gave his first deposition on oath, while labouring under the influence of fever, *gunja* and liquor. A reference to that deposition however shows, that he gave his answers to the several questions put to him with much distinctness. His evidence was favorable to the defendant, and, as remarked by the moonsiff, he evidently made the false statement charged, under the apprehension that his evidence would carry less weight with it were his near relationship to the defendant to be known. His object unquestionably was to defeat the plaintiff's claim. The sentence passed by the sessions judge is illegal. Though Regulation II. of 1834, makes no sentence for perjury illegal which was legal previously, yet irrespectively of the provisions of that law, a sessions judge has no power under the existing Regulations and Acts to pass a sentence of fine, commutable to labor in addition to a term of imprisonment on a conviction of perjury. I therefore annul the sentence of the sessions judge, and sentence the prisoner to be imprisoned for three (3) years with labor and irons.

1853.

August 3.
Case of
RUSSOOL
MAHOMED.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND RUTEEKANT GHOSE

*versus*SOBANDEE NUSHA (No. 1), AND MULUNGAH NUSHA
(No. 2.)

RUNGPORE.

—
1853.

August 5.
(age of
Sobandee
Nusha and
another.)

The prisoners, who were charged with dacoity and convicted by the sessions judge, were acquitted by the Nizamut Adawlut on the general insufficiency of the evidence.

CRIME CHARGED.—1st count, committing a dacoity in the house of the prosecutor and plundering therefrom property valued at Co.'s Rs. 173-8, and 2nd count, with being accomplices and aiding and abetting in the commission of the said crime.

CRIME ESTABLISHED.—Dacoity.
Committing Officer—Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 21st April 1853.

Remarks by the officiating sessions judge.—The prosecutor states that on the 25th of Phalgoon, (7th March,) he was roused by the dogs barking, and called his servant to see what was the matter and upon going outside himself, he was seized and bound by the dacoits; he recognized two out of ten men and knows none of the others: they carried off about rupees 170 worth of property, none of which has been recovered. While they were *looting* the house, prosecutor escaped and was pursued by the two prisoners, one with a sword and the other with a torch.

Witnesses, Nos. 1, 2 and 3, swear to both prisoners whom they clearly recognized, when they came out in pursuit of the prosecutor.

Witness No. 4, the servant of the prosecutor, swears that the two prisoners seized and bound him.

Witness, No. 5, recognized the prisoner, No. 2.

The prisoners pleaded *not guilty*.

Sobandee says he is a chowkeedar, and was on watch, and brings three witnesses who all swear to having heard him go his rounds four times on that night.

Mulungah pleads his former character and brings three witnesses to say he has a good one.

The defence bears traces of too great exactness, and I see not the slightest reason to doubt the witnesses for the prosecution, whose statements have been consistent throughout.

I tried this case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I do not think that such reliance can be placed upon the evidence for the prosecution in this case, as to warrant conviction. Although the prisoners are said on this trial to have been clearly recognized by several persons besides the prosecutor, yet the chowkeedar, who reported the dacoity, could mention no names. The prosecutor and two witnesses were examined on the 8th of March. These witnesses named only Mulungali. On the 9th, another witness, and on the 10th, two more deposed to having recognized both the prisoners, and these are the three principal witnesses on the trial; one of them being a nephew and the other two, servants of the prosecutor. The delay in bringing them forward for examination leaves much room for suspicion. No property was found in the houses of the prisoners, when they were searched by the darogah, and the evidence given on their behalf by the witnesses for the defence, is entirely favorable. I give the prisoners the benefit of the doubts suggested by a consideration of all these circumstances and acquit them.

1853.

August 5.
Case of
SOBANDEE
NUSHA and
another.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT

versus

HINGOO SHEIKH.

CRIME CHARGED.—Perjury, in having on the 28th February 1852, corresponding with 17th Falgoon 1238 B. S., intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before Mouljee Momtaz Allee, moonsiff of Gowas, that his name was Baboo, chowkeedar, resident of Hur-hurparah, and that in his presence an *istahar* was stuck up at the house of Goopeenath Roy, and an acknowledgment of the same was given by him, such deposition being false and intentionally and deliberately given on a point material to the issue of the case.

MOORSHEADABAD.
1853.

August 5.
Case of
HINGOO
SHEIKH.

Prisoner convicted of perjury, in having given his evidence under a false name, and sentenced to three years' imprisonment. Appeal rejected.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 27th April 1853.

Remarks by the sessions judge.—On the 28th February 1852, the prisoner was brought as a witness in a civil case before the moonsiff of Gowas, in which Mahomed Tuckee and others were plaintiffs, and Goopeenath Roy and others, defendants, when he deposed under a solemn declaration taken

1853.

August 5.
Case of
HINGOO
SHERKH.

instead of an oath that his name was Baboo, chowkeedar, that he was a resident of Hurhurparah, and that an *istahar* was stuck up at the house of Gopeenath Roy, and acknowledged by him in his presence, which deposition was false and intentionally and deliberately given on a point material to the issue of the case. From the evidence adduced, as well as from the prisoner's own confession the charge was proved. The assessors who sat on the trial convicted the prisoner of perjury and concurring in the verdict, I sentenced him as stated in the proper column.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner is clearly convicted of having deposited before the moonsiff as Baboo, chowkeedar in the case in question. The fact is proved by the evidence of the peishkar of the court, and by the evidence of the witnesses there and then present. Baboo, chowkeedar, who did attest the issue of the notice was also examined, and proved that he attested the issue.

The prisoner in defence pleads he was tutored by the vakeels. In appeal he states, that Bahooddeen and Lutafut Hossein, vakeels in the moonsiff's court, administered some thing to him under the influence of which he stated his name was Hingoo, but that he was also called Baboo; the rest of his statement before the moonsiff he did not recollect, adding he was tutored by the vakeels. The sessions judge's sentence, against which the prisoner appeals, is confirmed.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND LOKENATH HALDAR

versus

MUHESSUREE KHOTTANY.

CRIME CHARGED.—Attempt to murder Bidhoo Mookhee Chokeree for the sake of her ornaments by wounding her.

Committing Officer—Moulvee Gholam Ushruff, deputy magistrate of Boobood.

Tried before Mr. H. F. James, sessions judge of East Burdwan, on the 19th July 1853.

Remarks by the sessions judge.—The prisoner is charged with attempt to murder a young girl of about seven or eight years of age, for the sake of her ornaments. It appears from the deposition of the little girl, one Bidhoo Mookhee, given before the police officers and before the deputy magistrate of Boobood, that on 29th March last she was playing with some other children at a short distance from her own house in the village of Goolsee, when the prisoner who was known to her and who in the village in which they reside is called “Khuttabohoo,” asked her to accompany her home. The child at first objected, but the prisoner took her by the hand and led her some distance through the village to her (the prisoner’s) house. When they arrived there, the prisoner took the child into one of the huts composing the homestead and having closed the door, produced before the child a piece of thin rope, a knife, a small hatchet and a *bhuggee*, the instrument used by the natives for cutting fish and vegetables, and a small long stone for grinding *mussallah*, and having put the cord round her neck, she threw the child on the ground and struck her several times on the head and cheeks with the stone, and forced a knife into the girl’s mouth and broke one of her teeth. The prisoner seized the child again and thrust the knife into her mouth a second time, and cut the inside of her cheek and was proceeding to use great violence, when the screams of the child attracted to the prisoner’s house a neighbour and a relation of the child, named Lukkun Dutt. The child also states, that she had on at the time several gold and silver ornaments, and that the prisoner’s object was to get possession of them, and that had not Lukkun Dutt rescued her from the prisoner’s violence she would have been killed.

The little girl appeared in court, but as she was unable to understand the meaning of an oath, I did not take down her deposition, though the depositions as above taken before the

EAST BURDWAN.
1853.

August 5.
Case of

MUHES-SUREE
KHOTTANY.

The prisoner was convicted of attempting to murder a child for the sake of her ornaments, and sentenced to imprisonment for life in the zillah jail.

1853.

August 5.
Case of
MUHES-
SUREE
KHOTTANY.

police and the deputy magistrate were duly attested and sworn to by some four or five witnesses.

Lukkun Dutt, who was the first to reach the spot where the violence was going on, though made a witness in the case was not present in my court, but Nubbo Koomar, chowkeedar, witness, No. 2, deposes, that on the day of the occurrence he was at his own house, and hearing a noise at the house of the prisoner, he hastened to the spot and found Lukkun Dutt inside the premises calling for assistance and the prisoner, whose body and clothes were stained with blood, trying to escape, and the little girl in the house, severely wounded in the mouth, lying on the ground and near her were the instruments mentioned by the child, on which were marks of blood. After this, several of the villagers hearing the noise and cries for assistance, came to the spot and apprehended the prisoner, and those who were made witnesses, Nos. 10 and 11, corroborate in every particular the child's story with reference to the wound in her mouth and to her own conditions, and to the marks of blood on the body and clothes of the prisoner, and I see no reason to doubt the truth of this evidence in all its bearings.

The prisoner is a widow, living by herself on the proceeds of some twenty beegahs of chakeran land, which her husband, who was a chowkeedar of the village, once held. She is about thirty years of age and seems perfectly competent of judging between right and wrong, and must be considered in every respect a responsible agent, and must have been fully aware of the enormity of the crime she was committing.

In the mofussil the prisoner, before the police officers, confessed that she had attempted to murder the child for the sake of her ornaments, and stated that hunger and poverty were the cause of such an act.

Before the deputy magistrate at Boodbood she made the same statement, detailing all the particulars of her attempt to take the life of the child as mentioned by the girl herself and even further stated, that she had struck the child several times with the hatchet, the marks of which were apparent at the time of the *sooruthal*.

In my court the prisoner pleads *not guilty*, but admits that on the day in question, the little girl had come to her house as was frequently her custom, and that while she (the prisoner) was asleep on a raised platform the child had leapt on her and had fallen to the ground, and broken a tooth which accounted for the blood on her body and clothes, when apprehended by the villagers, and she attributes the case of attempt at murder being got up by the villagers owing to a quarrel she had had with them. She calls no witnesses either as to character or defence.

The evidence to the prisoner taking the child from the place where she was playing with the other children, and leading her to her own house, and to the screams of the child, and to her wounded state when found, and to the marks of violence on her body, is complete and satisfactory.

The premeditation of the prisoner and her intention are clearly established by such evidence, and there is no doubt but the child would have been murdered had not the timely arrival of Lukkun Dutt put a stop to the prisoner's violence, and I see no reason to treat such a case with leniency.

I tried the case with the assistance of a jury who brought in a verdict of guilty of the crime charged against the prisoner. I concur in the verdict, and I convict the prisoner of intent to murder the child for the sake of her ornaments, and I consider her deserving of imprisonment for life, and as there are no very serious or exaggerated circumstances connected with the case, I consider the confinement in the Allipore jail a sufficient punishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The confessions of the prisoner, which are duly verified, disclose a most deliberate and premeditated intention to take the life of the child for the sake of her ornaments. It was fortunate, that she was able to raise her voice sufficiently to be heard outside, otherwise the prisoner must soon have finished her bloody work. I convict the prisoner of the crime charged, and sentence her to imprisonment for life in the zillah jail, with labor suited to her sex.

1853.

August 5.
Case of
MUHES-
SUREE
KHOTTANY.

PRES^ENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

SERAJDEE KAREEGUR, (No. 1, APPELLANT,) AND LUK-
HEE SHAH, (No. 2.)

RUNGPORE.

1853.

August 5.
Case of
SERAJDEE
KAREEGUR
and another.

Two prisoners convicted, one of dacoity, and the other an accessory before and after the fact, sentenced the former to ten years and the latter, to five years imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the house of Ram Lochun Sircar, and plundering property to the amount of Co.'s Rs. 27-2; 2d count, with being accessory before and after the fact to the above offence, and 3d count, with being privy to the same.

CRIME ESTABLISHED.—No. 1, dacoity, and No. 2, being accessory before and after the fact to dacoity.

Committing Officer—Mr. S. F. Davis, joint magistrate of Serajgunge, Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 25th April 1853.

Remarks by the officiating sessions judge.—From the statement of the first witness, Government being made prosecutor, it appears that on the night of the occurrence he had taken his meal and gone to sleep, and that about 12 o'clock he was roused by the sound of footsteps near his house and that he went out, saw a man standing there with a *lattee*; he then returned and having armed himself with a spear went out and challenged him; some men then came forward and abused him, when the prosecutor struck one with the spear and wounded him, more came forward, and he wounded two more men, before he retreated to his house, at last he did so, but the door was speedily forced, and one of the men whom he had wounded in the thigh, seized him and threatened him and they bound his hands; they then lighted mussels and plundered the house of things to the amount of rupees 27 or 28. They then left, carrying the man wounded in the stomach with them. He recognised Serajdee, No. 1, and Lukhee, No. 2, on their being arrested.

Witnesses, Nos. 2, 3 and 4, were roused by the noise, but did not arrive at the house until the dacoits had gone. They found the first witness who told his story and whose clothes were bloody.

Witnesses, Nos. 7 and 8, witnesses to Lukhee's (No. 2's) confession at the thannah which was free and uninfluenced.

Witnesses, Nos. 10, and 11 to the confession before the joint magistrate free and uninfluenced.

The prisoner Scrajdee has a wound in the thigh, which he declares was gored by a cow, and also that he has a quarrel with the prosecutors; his first witness declares he saw the

cow gore him, and knows of a quarrel; the other seven only know from hearsay, or know nothing at all.

The prisoner, Lukhee, denies and declares he was ill-used, but his three witnesses know nothing about it.

I see no reason to doubt his confession, backed as it is by the evidence of the first witness, and the wound on Serajdee's thigh, and I therefore convict. The case was tried by me under Act XXIV. of 1843.

Sentence passed by the lower court.—Prisoner, No. 1, imprisonment with labor and irons for ten (10) years, and prisoner, No. 2, imprisonment for five (5) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The statement of the prosecutor accords so entirely with the confession of Lukee Shah, as to the nature of the wounds inflicted upon the dacoits, and other particulars, that I see no reason to doubt his assertion, that he had noted the features of the prisoners with such care, as to be able at once to recognise them, when taken. Lukee Shah states, in his confessions, which are duly verified, that one man who was severely wounded in the belly was thrown into the river by his fellow dacoits, and that Serajdee had a spear wound in the thigh. The story of Serajdee that he was gored by a cow on the very day of the occurrence of the dacoity, supported as it is by only one out of nine witnesses named by him, is unworthy of credit. The sentence is confirmed.

1853.

August 5.
Case of
SERAJDEE
KARERGUR
and another.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

SHEIKH SOHOBUT (No. 1), MOOLFUT (No. 2) AND
SHEIKH ELEEM (No. 3).

SYLHET.

1853.

August 5.
Case of
SHEIKH So-
HOBUT and
others.

Two prison-
ers convicted
of culpable ho-
micide and a
third as their
accomplice,
sentenced by
the sessions
judge, the first
to three years'
imprisonment,
the second to
one year's and
the third to
two years' im-
prisonment.
Conviction
affirmed, but
sentence mo-
dified.

CRIME CHARGED.—1st count, wilful murder of Emambux ; 2d count, being accomplices to the above crime, and 3rd count, privity to the 1st count.

CRIME ESTABLISHED.—Prisoners, Nos. 1 and 2, culpable homicide and prisoner, No. 3, being an accomplice to the culpable homicide.

Committing Officer—Mr. W. B. Buckle, magistrate of Sylhet.
Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 11th June 1853.

Remarks by the sessions judge.—This is an unfortunate family quarrel. From the evidence and admissions of the prisoners, it is shown that the prisoners, Sohobut and Eleem, and the witness, Enoss, were saying their evening prayers when Somun Bebee, the sister-in-law of Sohobut, talked so loud as to interrupt them. Sohobut thereupon arose and struck her with a wooden shoe (a khurrum) which made her cry. Her brothers, the deceased and Noorbux, came and asked her what she was crying for and upon that Sohobut came up to them and used words, which provoked the deceased, and a fight ensued between the deceased, Sohobut and Eleem, who were aided by the prisoner Moolfut.

The deceased received a severe blow on the head which was inflicted by Sohobut, and another on the leg, given either by Sohobut or Eleem, which brought him to the ground, when Sohobut sprung upon him and held him by the throat. Eleem's mother interposed and separated the parties, but, in doing so, received a blow which broke her arm; each party then went to their own house and the deceased died in the course of the night.

The body was sent in to the station, but was in too decomposed a state to be examined by the civil surgeon. There can be little doubt but that death was caused by the blow on the head, a wound which, according to the sooruthal, was three fingers long and one broad.

The prisoner, Sohobut, confesses before all the courts that he struck the deceased, but without any intention of killing him, but Eleem and Moolfut only admit their presence. They, however, urged that the deceased had died of a bowel complaint, and named the witnesses for the prosecution as their evidence to the fact, but this the witnesses denied all knowledge of. The witnesses depose that Noorbux, the brother of the deceased,

was present with a stick in his hand, but they do not say that he took any part in the fight, and the magistrate has not therefore committed him for trial.

The assessors find Sohobut and Eleem guilty of culpable homicide, and Moolfut of being an accomplice therein, and in this verdict I acquiesce.

It does not clearly appear which party struck the first blow, but the prisoners had marks of assault on their persons when examined by the police, and the witnesses depose to the deceased having used his stick. The quarrel was unpremeditated, and no previous ill-will existed between the parties.

There is a charge I observe against Noorlux, pending before the magistrate, of assaulting Musst. Ason, the mother of the prisoner, Eleem.

Sentence passed by the lower court.---No. 1, to be imprisoned for three (3) years without irons, and to pay a fine of thirty (30) rupees, on or before the 20th June 1853, or in default of payment to labor until the fine be paid, or the term of his sentence expire. No. 2, to be imprisoned for two (2) years and to pay a fine of twenty (20) rupees or in default, &c., as above; and No. 3, to be imprisoned for two (2) years and to pay a fine of ten (10,) rupees, or in default, &c., as above.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The conviction is good. With reference to the circumstances of the case, the sentence against Sheikh Sohobut appears just and proper. I can find no sufficient reason, however, for making a distinction in the award of punishment between Moolfut and Eleem, to the disadvantage of the former. The evidence does not prove that he took a more active part in the assault, and the assessors, by their verdict, in which the sessions judge records his concurrence, show, that they regarded him as a principal only in the second degree. On these grounds, confirming the sentence passed against Sheikh Eleem, I reduced* that against Moolfut to the same standard.

* Letter, No. 40 of 1853, dated 17th August 1853, from the sessions judge of Sylhet to the Register of the Nizamut Adawlut.

"I have the honor to acknowledge the Court's letter, dated 5th August, and the extract of the proceedings of the Court held upon the trial of Sheikh Sohobut and others, and to inform you that by an error my writer has in the abstract entered Sheikh Moolfut as sentenced to 2 years and 20 rupees, and Sheikh Eleem to 1 year and 10 rupees; but in my sentence and in the warrant issued to the magistrate, Moolfut was sentenced to 1 year and 10 rupees and Eleem to 2 years and 20 rupees.

"It is the Court's intention that both prisoners should suffer the same punishment, and I beg, therefore, to return the Court's resolution and extract for correction."

With reference to the above letter, the Court (present Mr. J. Dunbar,) passed the following order—"Under the explanation given let the sentence against Eleem be reduced to one year's imprisonment and 10 rupees fine, to correspond with that against Moolfut."

1853.

August 5.
Case of
SHEIKH SO-
HOBUT and
others.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

*versus*VAKEEL BAHAOODEEN (No. 7), AND GOLAM SABRIN
(No. 8).

MOORSHEDAB-

B.D.

—
1853.August 5.
Case of
VAKEEL BA-
HAAOODEEN
and another.Two prison-
ers convicted
by the ses-
sions judge of
perjury and
sentenced to
three years'
imprisonment.
Sentence re-
versed in ap-
peal, and pri-
soners acquit-
ted.

CRIME CHARGED.—Subornation of perjury, in having on the 28th February 1852, corresponding with 17th Falgoon 1258, B. S., intentionally and deliberately caused Hingoo Sheikh to depose under a solemn declaration taken instead of an oath before Moulvee Momtaz Alli, moonsiff of Gowas, that his name was Baboo, chowkeedar, resident of Hururparrah, and that in his presence an *ishtahar* was stuck up at the house of Gopeenath Roy and an acknowledgment of the same was given by him, such deposition being false and intentionally and deliberately given on a point material to the issue of the case.

CRIME ESTABLISHED.—Subornation of perjury.

Committing Officer—Mr. G. Loch, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshe-dabad, on the 18th May 1853.

Remarks by the sessions judge.—In a civil case a Mirza Mahomed Tuckee, &c., *versus* Gopeenath Roy, &c., before the moonsiff of Gowas, the prisoner, Golam Sabrin, on the part of Mirza Mohamed Tuckee, prevailed upon one Hingoo to depose on oath that his name was Baboo, chowkeedar, and that he was present when a notice was stuck up at the house of Gopee-nath Roy. Lotafut Hossain brought Hingoo Sheikh before the moonsiff, calling him by name of Baboo, chowkeedar, and caused his deposition to be given as such. Bahaoodeen, another vakeel, who was then present caused the above deposition to be taken down. The prisoner, Bahaoodeen, in his answer clearly admitted that on the night preceding the day on which such deposition was given, Hingoo, the witness, was in his lodging, and there is the strongest presumption that the prisoner, Bahaoodeen, who was vakeel in the original suit, intentionally and deliberately caused the above deposition to be taken. The prisoner, Golam Sabrin, stated in his defence that he sent Hingoo with a letter to the pleader, Lotafut Hossain, for the purpose of learning the progress of the civil case, but as that letter was not filed such a statement did not exculpate him. Hingoo Sheikh (who had already been pun-ished) on being called before the court identified Golam Sabrin and Bahaoodeen and said Golam Sabrin had sent him to Gowas with a letter, that during the night he remained in

the lodging of Bahaoodeen, vakeel, and on the following day gave his deposition under the assumed name of Baboo, chowkeedar, and when on trial before the court for perjury, Hingoo stated in his confession that Bahaoodeen, pleader, had instructed him. Under these circumstances I considered both the prisoners guilty of having on the 28th February 1852, or 17th Falgoon 1258, caused a deposition to be given by Hingoo Sheikh on solemn declaration taken instead of an oath before Moulvee Momtaz Alli, the moonsiff of Gowas, to the effect that his name was Baboo, chowkeedar, that he was resident of Hurarparrah and that in his presence on *ishtahar* was stuck up at the house of Gopeenath Roy, and an acknowledgment of the same was given by him, such deposition being false and intentionally and deliberately given on a point material to the issue of the case. One of the assessors who sat on the trial considered the prisoners not guilty, from which verdict I dissented, and concurring in the verdict of the other who pronounced the prisoners guilty, I sentenced them as stated in the proper column.

Sentence passed by the lower court.—Three (3) years' imprisonment each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—These prisoners are the vakeel Bahaoodeen, alluded to in the trial of Hingoo in March last, and Golam Sabrin, is the party alleged to have sent Hingoo to the vakeel, Lotafut Hossein, (absent) in the moonsiff's court for the purpose of depositing under the name of Baboo, chowkeedar, to the issue of notice through the peadah of the court.

Neither of the prisoners is by the evidence on the record, connected with the false deposition given before the moonsiff by Hingoo, already convicted of perjury.

All the witnesses in the calender depose solely to the offence committed by Hingoo, who in his defence implicated Bahaoodeen and Golam Sabrin. This is not legal evidence against them and there is none other. Whatever may have been, the suspicions in the sessions judge's mind—"the strongest presumptions," on which he pronounces the prisoners guilty in concurrence with one of the two jurors, do not arise, and the prosecution has altogether failed to establish any legal presumption against them. They are acquitted and will be immediately released.

1853.

August 5.
Case of
VAKEEL BA-HAOODEEN
and another.

PRESENT :

J. R. COLVIN, Esq., Judge.

H. T. RAIKES, Esq., Officiating Judge.

GOVERNMENT

versus

RAJKISHORE ROY (No. 13, APPELLANT), JUMABUX
 (No. 14, APPELLANT), SREENATH NUNDY (No. 15),
 AND HAROPERSHAUD DOSS (No. 16).

RUNGPORE.

1853.

August 6.
 Case of
RAJKISHORE
 Roy and
 another.

In a case in which several prisoners were convicted of being present aiding and abetting in an affray with severe wounding, of two who appealed, one was released, and the sentence on the other confirmed.

CRIME CHARGED.—1st count, affray with severe wounding of Sumbul Singh and Khodabux, and slightly wounding and beating of Simul Singh, Jurman Singh, Jumooun and Nepat, and 2nd count, being present, aiding and abetting in the same.

CRIME ESTABLISHED.—Being present, aiding and abetting. Committing Officer—Mr. A. W. Russell, officiating joint magistrate of Rungpore.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 17th May 1853.

Remarks by the officiating sessions judge.—This was a case of affray between the people of the Bykuntpore estate. It appears from the evidence before the court, that the cutcherry attacked was the subject of dispute, and at the time of the occurrence was in possession of the party of Mukrund Deb, and that the minor's party came in force to attack them and drove them out, and that several men were wounded on both sides, those only who were wounded, or said to be so, belonging to Mukrund Deb appeared, and the minor's men who were cited as witnesses were not forthcoming. Dr. Walter bore evidence to the very severe wounding.

Four prisoners were put on their trial before the sessions. Two of the minor's party, No. 13, Rajkishore, and No. 14, Jamabux, and two on Mukrund Deb's, No. 15, Sreenath Mundle and No. 16, Huopershad Doss (acquitted.)

Witnesses, Nos. 1 and 2, the wounded men, swear to the attack and all the circumstances attending; No. 1, swears to prisoner No. 14, as present and active in the business and witnesses Nos. 2 to 13 and 14, both taking distinguished parts.

Witnesses, Nos. 3, 4, 6 and 7, swear to both the prisoners, Nos. 13 and 14, being active ring-leaders.

Witness, No. 5, recognised prisoner, No. 13.

Witnesses, Nos. 10 and 12, (the minor's men) saw the affray, and prisoners, Nos. 14 and 15, engaged in it.

Witnesses, Nos. 24, 26, 28 and 30, prove the cutcherry to have been in the possession of Mukrund Deb's people.

Witnesses, Nos. 15, 17, 19, 20, and 22, merely testify to the sooruthal.

The prisoners all plead, that they were far away from the place at the time.

No. 13, Rajkishore, says, he was in his own house and brings two witnesses to swear to it.

Prisoner, No. 14, denies it in *toto*, says that there has been a regular attack upon him for some time and pleads, that he was under the special protection of the thannadar at the time and could not have been there. He brings a burkundauze and several chowkeedars to prove, that he had given intimation long before at the thannah, that Muckrund Deb's party wished to seize him and that they were especially deputed by the darogah to see that he was not carried off.

The jury consisting of Kishenbundhoo Roy, Kalleedass Dutto and Gourmohun Sein, acquitted all the prisoners.

I differ and consider the proof quite sufficient to convict Nos. 13 and 14 on the 2nd count, I do not hold the *alibi* of No. 13, to be established in the teeth of the prepondering evidence of his being present at the affray, and the ruse of Jumabux of applying to the thannah for protection when an exploit like this is in contemplation is, I believe common, nor do the witnesses prove his non-participation, they merely establish the fact that they remained at his house for his protection not that they prevented him leaving the house when so disposed.

Sentence passed by the lower court.—Each to be imprisoned without irons for three (3) years, and to pay a fine of two hundred (200) rupees on or before the 16th June 1853, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin and H. T. Raikes.)—The two prisoners, Nos. 13, Rajkisore Roy, and 14, Jumabux, have appealed. We find the evidence against No. 13 to be very weak. He is a principal manager on the part of the ranee, mother of the minor claimant to the Julpye Goree estate, and had he been really present on the occasion, there cannot be a doubt that he would have been prominently mentioned from the beginning. So far from this being the case, it was not till he happened to be present before the darogah on the 28th of January, looking after the progress of this case, that the principal witness, Nagor, No. 3, implicated him as having been concerned in the attack. We are surprised that the sessions judge should not have adverted to this very material fact, and we think the evidence against this prisoner to be clearly most suspicious and insufficient, and therefore direct his acquittal.

Regarding the other prisoner, No. 14, Jumabux, he was named by Nagor in his first statement before the darogah, on the 9th of January, and also in the deposition taken on the

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same day of Khodabux, one of the wounded men. The pleader for this prisoner has argued, that the record shows that there was a determined desire on the part of Raja Mookrundeb's people to implicate him. This, however, is not the case; for he is not mentioned in the deposition of Sumbhul Singh, the other wounded party, which was taken on the same day. His name was further not included in the petition of Nagor, given at the thannah, which it would have certainly been, had there been any special purpose of procuring his conviction. The other witnesses, who depose against him, were not produced before the darogah for a lengthened period, extending from 12 to 19 days after the occurrence. This blank in the investigation is accounted for by the apprehensions caused by the collection of armed men on both sides. But it shows that there was no urging forward a case from any particular animosity against this prisoner. The evidence against him on the trial is direct, and corroborated as it is by the circumstances above noted on the record, we see no grounds for discrediting it. The character of the case has, as usual, been much exaggerated, but the medical evidence shows, that the contused wounds inflicted on the wounded men were numerous and so severe, that one of them was in hospital for three months. We therefore see no reason to interfere with the quantum of punishment awarded by the sessions judge against the prisoner, Jumabux.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND SUMEERUDDIN

*versus*SOLIM SHEIKH (No. 1), AND MAHOMED ALLI
BISWAS (No. 2).

CRIME CHARGED.—1st count, Nos. 1 and 2, forgery, in causing a document to be prepared, called a *solchnamah*, falsely purporting to bear the signature of one Sumeeruddin Sirdar, son of Keetabdee Sirdar, an inhabitant of Moorareedah with intent to injure and defraud the said Sumceruddin Sirdar; 2nd count, Nos. 1 and 2, issuing and causing to be issued the aforesaid document in the moonsiff's court at Jheenadah, well knowing it to be a forgery and with the intent of defrauding and injuring the said Sumceruddin Sirdar; 3rd count, No. 1, falsely personating Sumeeruddin Sirdar, son of Keetabdee, in the moonsiff's court at Jheenadah with intent to defraud the aforesaid Sumeeruddin Sirdar, and 4th count, No. 2, instigating and aiding prisoner, No. 1, in falsely personating Sumeerddin Sirdar, son of Keetabdee, with intent to injure and defraud the aforesaid Sumeeruddin Sirdar.

CRIME ESTABLISHED.—No. 1, issuing a *solehnamah* in the moonsiff's court knowing it to be a forgery, and with intent of defrauding and injuring Sumeeruddin Sirdar, and also of falsely personating Sumeeruddin Sirdar, son of Keetabdee, with the said intent. Prisoner, No. 2, being guilty of having caused to be issued a *solchnamah* knowing it to be a forgery, with intent to injure and defraud Sumeeruddin Sirdar, also of instigating prisoner, No. 1, to falsely personate Sumeeruddin Sirdar, son of Keetabdee, with the above intent.

Committing Officer—Mr. J. S. Spankie, assistant joint magistrate at Magoorah in Jessore,

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 26th April 1853.

Remarks by the sessions judge.—The prosecutor, Sumeeruddin, son of Keetabdee, declares that he was about to sue his ryot, prisoner, No. 2, for rent, when he found that the ryot had got up a false case of debt and compromise against him through false personation.

From the evidence of witnesses, Nos. 1 to 3, for the prosecution, it is clear that prisoner, No. 2, without any power of attorney from Muriam Bebee, signed her name and handed over to Moonshee Usimuddee (a vakeel of the Jheenadah moonsiff's court) a *vakalutnamah* to empower him to prosecute Sumeeruddin Sirdar, son of Keetabdee Sirdar, for debt said to have been

JESSORE.

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Case of
SOLIM
SHEIKH and
another.

Two prisoners charged with forgery of of a *solchnamah* convicted by the sessions judge and sentenced to three years' imprisonment. In appeal one prisoner was convicted of false personation, and the other of inducing him to make this false personation and each sentenced to six months' imprisonment.

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incurred by the said Sumeeruddin to Ameeruddeen (the deceased husband of the widow Muriam Bebee) ; also a tumasook and a stamp paper to write the plaint on.

Witness, No. 1, accordingly filed a plaint in the moonsiff's court. A few days afterwards Mahomed Ali, prisoner, No. 2, came and said that the case was compromised.

Prisoner, No. 2, then took Solim, prisoner, No. 1, who was identified by witness, No. 5, to personate the defendant at the moonsiff's court, and gave witness, No. 1, the deed of compromise to write "munzoor" on it. After which Mahomed Ali, prisoner, No. 2, handed it to Solim, who presented the deed to the moonsiff and on the reverse thereof the moonsiff recorded, on the 6th September, that the prisoner, No. 1, declared himself to be Sumeeruddin son of Kurumdee, but as it appeared that the case lay against the son of Keetabdee, he was questioned ; he then said his father's name was Keetabdee and he had made a mistake in saying it was Kurumdee.

On the following day his answer was taken in due form when he said his father had two names, Kurumdee and Keetabdee and declared his ancestors had lived in Moraredha, his father had run off to Chaparee where he (prisoner) was born ; he thence went to Bogora and subsequently a month back to Moraredha where he remained in Kinnoo's house, and that his family were with him there, (this however is contrary to the evidence of Kinnoo) and that Mahomed Ali had brought him thence to the moonsiff's court to file a compromise.

The moonsiff's shershtadar (witness, No. 6,) who wrote the above reply was reported ill and has not given evidence, but the reply is corroborated by the testimony of witness, No. 1, as well as by prisoner's defence in this court.

Mahomed Ali denies having given witness, No. 1, the *vakalutnamah* and other papers mentioned in the evidence of the three first witnesses, but in the answer which he gave to the moonsiff on 7th September, he declared the father of Solim to be called both Kurumdee and Keetabdee ; that he knew of the plaint and had held converse with Solim ; that prisoner, No. 1, filed the *solehnamah* ; that prisoner, No. 2, was nephew of the widow of plaintiff, and that he had signed her name on the *vakalutnamah* and brought the stamp.

It is proved by witnesses from Chaparee and Bogora as well as by the prisoners' witnesses, Nos. 21, 23 and 26, that prisoner, No. 1, left Chaparee ten or twelve years ago ; that his name is Solim, that his father is Kurumdee. The bond therefore bearing date 1252, as signed by Sumeeruddin of Chaparee, could not have been, as pretended, a *bond fide* transaction.

It is not attested by witnesses who can read or write and the evidence of these witnesses, *viz.*, Nos. 19 and 21, is unsatisfactory and contradictory.

The evidence for prisoner, No. 2, by no means clears him.

The verdict of the jury is that the 2nd, 3rd, and 4th counts are proved.

I convict prisoner, No. 2, of being guilty of having caused to be issued a *solchnamah* knowing it to be a forgery, with intent to injure and defraud Sumeeruddin Sirdar, also of instigating and aiding prisoner, No. 1, to falsely personate Sumeeruddin Sirdar, son of Keetabdee with the above intent.

I also convict prisoner, No. 1, of issuing the aforesaid document in the moonsiff's court, knowing it to be a forgery, and with the intent of defrauding and injuring the said Sumeeruddin, also of falsely personating Sumeeruddin Sirdar son of Keetabdee with the said intent.

The frequency of compromises in the civil courts of this district affords grounds for suspicion, that false personation is too prevalent : wherefore an example should be made of the culprits in the present case.

I therefore sentence them each to three (3) years' imprisonment with labor.

Remarks by the Nizamut Adawlut.—(Present, Sir R. Barlow : Bart.)—There is ample proof on the record that the prisoner, Solim Sheikh, personated Sumeeruddin in the case before the moonsiff, and that he gave in a confession of judgment under the name of Sumeeruddin, which the vakeel, Wussecuddeen, *who has been made a witness* on part of the alleged plaintiff before the moonsiff, Muriam Beecbee, *gave to the prisoner*, No. 2, bearing his, the vakeel's consent, and signed, "munzoor" as he says by order of Mahomed Alli, prisoner, No. 2, who brought the said confession of judgment written out.

No conviction of the prisoners of issuing a *forged solehnamah*, or rather confession of judgment can be good under the above circumstances; if the document, which was put in was not a genuine deed or act of Sumeeruddin, it was, to that extent, a forged deed, and it may be that it was prepared by those who filed it. But the prisoner when he filed the deed as *Sumeeruddin*, concealing his own name *Solim*, was clearly guilty of false personation, which is an offence under the Mahomedan law and is the ground of the 3rd count in the calendar. The Court convict him on this count, and sentence him to six (6) months' imprisonment, with fine of twenty-five (25) rupees, in default to labor without irons.

Prisoner, No. 2, is shown by the evidence of the vakeel, Wussecuddeen, to have brought prisoner, No. 1, with him to the Court, and in the presence of the vakeel, it is proved that

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he, No. 2, gave the deed to prisoner, No. 1, who styled himself Sumeeruddin on the occasion of filing it. There is evidence of the enmity alleged to exist between the prisoner, No. 2, and the said Sumeeruddin, who by the deed filed by No. 1, engaged to pay a certain sum alleged to be due by instalments. The whole affair appears to have originated in this enmity and the suit was to be the means of punishing Sumeeruddin.

The prisoner, No. 2, instigated the prisoner, No. 1, there is strong ground to believe, to personate Sumeeruddin. He is sentenced also to six (6) months' imprisonment, with twenty-five (25) rupees fine in default to labor without irons.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND OTHERS

versus

SUROOP MOOCHEE (No. 1), **TINNOHURRY BAGDEE** (No 2, APPELLANT), **HULLODHUR GHOSE** (No: 3, APPELLANT), **MUDDUN GHOSE** (No. 4, APPELLANT), AND **NUSHEERAM BAGDEE** (No. 5, APPELLANT.)

NUDDEA.

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Case of
TINNOHURRY
BAGDEE and
others.

Prisoner
convicted of
dacoity attend-
ed with person-
al injury and
sentenced to
nine years' im-
prisonment.
Appeal reject-
ed.

CRIME CHARGED.—1st count, dacoity in the houses of the under-mentioned prosecutors, attended with the personal injury of Ghreedhur Dutt, (witness, No. 1), and the plunder of property to the aggregate value of rupees 141-13, No. 5, *viz.* : of prosecutor, Sridhur Dutt, rupees 126-4, and of prosecutor Mohesh Chunder Dutt, rupees 15-9-5 ; 2nd count, being accomplices in the above charge, and 3rd count, prisoners, Nos. 3, 4 and 5, receiving and keeping in their possession a part of the property, knowing it to have been acquired by the said dacoity.

CRIME ESTABLISHED.—Dacoity attended with personal injury of Greedhur Dutt, (witness, No. 1.) in the houses of prosecutors, Greedhur Dutt, Sridhur Dutt *alias* Sreemunth Dutt and Mohesh Chunder Dutt, and plundering property belonging to the former to the value of rupees 126-4 annas, and to the latter to the amount of 15-9-5, being in aggregate to rupees 141-13-5, and prisoners, No. 3, 4 and 5, also knowingly receiving a part of the plundered property.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions, judge of Nuddea, on the 4th February 1853.

Remarks by the sessions judge.—Although the whole of the prisoners have pleaded "not guilty" to the charges on which

they have been committed for trial, yet from the statements of the two prosecutors and the depositions of the three eye-witnesses, it is clearly proved, that the whole five prisoners were distinctly recognised during the commission of the dacoity, at which time Greedhur Dutt, witness, No. 1, was so severely struck with a *lattee* on his left hand as to have lost the thumb-nail of that hand. Further, the confessions made by Suroop Mochee, prisoner, No. 1, and Nusheeram Bagdee, No. 5, before the police and repeated before the magistrate, which confession are satisfactorily proved to have been voluntarily made, implicate the whole of the prisoners. The above proof are further corroborated by the finding of a brass cup (*cutorah*) in the possession of Hullodhur Ghose, (No. 3,) and Muddun Ghose, (No. 4,) who are brothers and live together, which *cutorah* and a red bordered *saree* (found on the mother-in-law of No. 5, Nusheeram Bagdee,) are sworn to by credible witnesses to be the property of the prosecutors. The prisoner, Muddun Ghose, called three witnesses to prove an *alibi*, the second of whom on being sworn fell down in a fit. The evidence of the other two was not satisfactory, for though they deposed to the dates on which they said they saw the prisoner at his father-in-law's house, they could give no reason for having recollect the dates nor could they give the dates of subsequent occurrences. The remaining four prisoners only called witnesses to their characters, who, with the exception of those called by Tinnohurry Bagdee, prisoner, No. 2, gave Nos. 1, 3 and 5 bad character. Those who appeared for prisoner, No. 2, were connected with him and of course gave him a good character, but in a case like the present in which the crime of dacoity is established, proof of former good character is of no avail.

Sentence passed by the lower court.—seven (7) years' imprisonment and two (2) years in lieu of corporal punishment, being in aggregate nine (9) years each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart).—The prisoners were recognized by the prosecutor's brother, Greedhur Dutt, in the act, and were named by him immediately on the arrival of the police. Several witnesses also in the mofussil, as well as before the magistrate and the sessions court, swore to their identity. Prisoners, Nos. 1 and 5, confessed in the mofussil and before the magistrate. Their confessions are duly attested. The prosecutor in the sessions court said, he recognized the prisoners, but made a contrary statement before the darogah and the magistrate. The prisoners, Nos. 2 and 3, brought witnesses to their character, nothing however which can be taken as evidence was elicited in their favor.

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Case of
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Prisoner, No 4, attempted an *alibi* at Baliadunga, 1½ or 2 coss from Bajbarea, where the prosecutor lives, but failed. I see no reason to interfere with the sessions judge's sentence.

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Case of
**TINNOHURRY
BAGDEE** and
others.

PRESENT:

SIR R. BARLOW, BART.,, }
AND } *Judges.*
J. R. COLVIN, Esq.,

GOVERNMENT

versus

GUNGARAM.

**TENASSERIM
PROVINCES.**

CRIME CHARGED.—Wilful murder,
Committing Officer—Major Henry Bower, magistrate of Moulmein.

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Case of
GUNGARAM.
Prisoner charged with wilful murder, convicted and sentenced to capital punishment. Dying declarations should bear on them a note of the precise hour of the day at which they are taken.

Tried before Lieutenant-Colonel A. Bogle, commissioner of the Tenasserim and Martaban Provinces, on the 30th June 1853.

Remarks by the commissioner.—That Gungaram a life-convict in the provincial jail of Moulmein, on the 15th day of June 1853, between the hours of 6 and 7 p. m., whilst the convicts were being counted into prison for the night, did, feloniously, wilfully and of his malice aforethought, make an assault upon Nowran Singh, also a life-convict in the said jail, and that the said Gungaram did, then and there with a certain iron-handle knife, such as is commonly used by workers of ratan, having a blade one and a half inches broad, and about three inches long, with a sharp point, which he held in his hands, inflict a mortal wound between the sixth and seventh ribs of the left chest of the said Nowran Singh, of which mortal wound, the said Nowran Singh did from the said 15th day of June to the 17th day of the same month languish, and languishing did live, and on which said 17th day of June, between 1 and 3 o'clock A.M., the said Nowran Singh of the said mortal wound, died.

Prisoner pleads.—*Not guilty.*

JURORS.

Mr. W. Murray.	Duly chosen by lot and not challenged by the prisoner, when asked if he has objections to state to any of the five. Make solemn affirmation.
Mr T. Wittam.	
Hadgee Hussain.	
Moung Youk Kyee.	
Moung Kya Ban.	

First witness for the prosecution.—William Price, jailor, at Moulmein, aged 38 years, son of William and Mary, duly sworn, states I remember that on the evening of 15th instant, when counting in the prisoners a cry arose from inside the jail, that a man had been stabbed; immediately afterwards Nowran Singh, deceased, came out and said that he had been stabbed by Gungaram, a convict, now at the bar, a prisoner,

and gave me the knife which he had himself drawn out of the wound, which was between the lower ribs of his left side, I took the knife and went to the door of the ward and told Tindal Curreem to go in and search for the prisoner, who was said to have crept under the platform on which the convicts sleep : Tindal Curreem brought him out and took him to the jail office, where he was hand-cuffed, he was then taken to the cell and put in chains, I then asked where he got the knife, he said Buicklow or Mooktomo of second class had given it to him, he would not answer any other questions I put, he made no confession before me. The wounded man was sent to hospital, and there died the following night. It was between 6 and 7 p. m. that the affair occurred. I was told afterwards that it was Nowran Singh, deceased, who first called out that he was stabbed. I was not aware of any enmity between the prisoner and deceased, but I have since heard, that on the 6th instant, a convict called Thakooree, struck one Bahadoor Singh on the head with a lotah, and Nowran Singh seeing this struck Thakooree, and he being a brahmin, and headman of prisoners caste, prisoner in revenge stabbed Nowran Singh, so I have heard ; Thakooree was sent to Mergui about a fortnight ago. The quarrel between Thakooree and deceased was, consequent on a supposition, that deceased had been the cause of another convict being sent to the jail at Talien Lines. I have only been three months jailor here, but I understood prisoner was a good man, he has been nearly four years in the Moulmein jail. The deceased was a good man, a sepoy mutineer.

The prisoner and jury have no questions.

Question by court.—I was present when Major Bower, magistrate, took down Nowran Singh's dying declaration on the morning of the 16th instant, Nelikan and others attested it, I did not ; Nowran Singh stated, that Gungaram was the man who had stabbed him, that he believed that it was owing to Thakooree and prisoner being of same caste and friends. Deceased was quite sensible at the time although weak.—(*Witness withdraws.*)

Second Witness for Prosecution.—John Andrew Regnalds, Civil Surgeon, Moulmein, aged 39, son of John and Charlotte, duly sworn states, I remember seeing a prisoner named Nowran Singh in the jail hospital on the morning of 16th instant, he had a bad wound on left side of his chest, occasioned by a knife or other sharp instrument ; when I saw him he was in a dying state ; I was told he had been wounded the evening before ; he died in the course of night or rather morning of 17th, and found that the wound was about five inches below the left nipple, and that the weapon had penetrated inwards and downwards cutting through the seventh rib and into the stomach. I consider that the deceased died of this wound, he

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was a young powerful man and otherwise apparently in health. The knife before the court is such as would have inflicted the wound of which deceased died. I have no doubt but that deceased died of the wound I have noticed.

Prisoner and jury having no questions. (*Witness withdraws.*)

Third Witness for Prosecution.—Bahadoor Singh, son of Mohil Singh, aged — years, makes solemn affirmation and states, I knew Nowran Singh convict, I saw him some fifteen or sixteen days ago, counted in at evening, he was going along inside the jail. The prisoner was standing in the lee of a post and when the deceased approached him, the prisoner, Gungaram, struck him with a knife, striking with both his hands, I was close behind deceased and distinctly saw this, the lamps had been lit, and there was light enough; having struck the blow, the prisoner, Gungaram, immediately crept under the platform from where Curreem the tindal afterwards dragged him out. I conveyed the deceased to the jail office, he had the knife in his own hand and gave it to the jailor; Nowran Singh was then taken to the hospital and lived that night, the next day and died the next night. The knife before the court is the very knife, it was covered with blood when I saw it; Nowran Singh said Gungaram had stabbed him, and I saw him do it, Nowran Singh tried to hold him but he slipped away; I do not know of any quarrel between the parties before; I can assign no cause for the deed except that Nowran Singh had a quarrel with Thakooree now gone to Mergui. Nowran Singh at once cried out Gungaram has stabbed me, prisoner and myself are both Rajpoots.

Prisoner and jury have no questions.

Fourth Witness for Prosecution.—Major Henry Bower, magistrate of Moulmein, duly sworn, states, I remember a convict named Nowran Singh, being stabbed in the Moulmein jail, it was in the evening of 15th instant between 6 and 7 p. m.; I went next morning and took his declaration; he was very weak and faint, and said he was dying; he was stabbed on the left side at seventh rib; he stated that the prisoner, Gungaram, had stabbed him; he said prisoner had gone into the jail before and remained behind a post, and when deceased came up jumped at him and stabbed him, and then crept under the platform on which the convicts sleep. He stated that the knife before the court was the one with which he was stabbed; that he had himself drawn out the knife and gave it to the jailor, Mr. Price; I asked him if there was any quarrel between him and prisoner, he said, no; but he had had a quarrel with a convict, Thakooree, with whom Gungaram was a great friend, his priest in fact, and that he thought that was the cause; Thakooree is a brahmin and a troublesome man, the deposition

before the court appended to the magistrate's proceedings is the one I took the day before deceased's death, it bears my signature. The deceased died before 3 A. M. of 17th.

Prisoner and jury have no questions.—(*Witness withdraws.*)

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Fifth Witness for Prosecution.—Balla Kistew, convict, tindal, aged 50, son of Futtu Singh, makes solemn affirmation and states, on the evening of a day sixteen days ago, cannot state the date, I was locking up the convicts, it was between 6 and 7, suddenly I heard Nowran Singh convict, cry out, I have been stabbed. I ran up to him, and found he was wounded on the left side with a knife ; I asked him who had stabbed him, he said Gungaram, the prisoner ; Nowran Singh had the knife in his hand ; I asked where Gungaram had gone, he said underneath the platform, I looked and there he was ; I told him to come out ; he would not do so until he was told he would not be beaten ; when on the tindal Curreem calling him, he at last came out, the jailor then took him away and the wounded man was taken to the hospital ; when I first heard the cry, I was only a few paces from Nowran Singh, when I looked under for prisoner, he would not come out for fear of being beaten ; I did not see any blood in his clothes ; Nowran Singh had a quarrel lately with Thakooree, but not with prisoner, but Thakooree was prisoner's priest or gooroo ; Nowran Singh beat Thakooree about twenty days before his death ; I distinctly heard Nowran Singh say, Gungaram had stabbed him ; Nowran Singh died after two nights and a day of the wound he had received.

Prisoner and jury have no questions.

Sixth Witness for Prosecution.—Curreem, convict, tindal, aged 45, son of Jandeer, makes solemn affirmation and states, that on the evening of 15th instant, I was at the jail door, counting in the convicts, when I heard a cry that some one was stabbed. Nowran Singh, deceased, called out, and came towards me holding his side, he said Gungaram had stabbed him, and showed me the knife which he had in his own hand. Nowran Singh then gave it to the jailor, Mr. Price. I handed him over to Mr. Price and went inside to look for prisoner, Balla Kistew said he was under the platform in which the convicts sleep. I looked below and saw him, on calling him he would not come, but on my calling he came near and on my promising he should not be beaten he finally emerged. I then took him to the jail office, and by jailor's orders put him in extra irons ; we then asked him why he had stabbed Nowran Singh, but he would give no answer, nor did he deny it, indeed he said that Mooktam and Hunooman Singh, convicts, had told him to kill Nowran Singh. The knife before the court is the one used ; prisoner was much agitated when taken from below the platform, and looked wild and terrified. Nowran Singh and Bahadoor Singh are friends

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and of the same caste. Nowran Singh was a quiet man, and had no quarrel with prisoner, but had beaten his gooroo, Thakooree, and when Thakooree was in hospital, prisoners and others used to attend him. There was once before a great feud about that Gooroo who was a bad and intriguing man, and gave much trouble.

Prisoner and jury have no questions.—(*Witness withdraws.*)

Prisoner's Defence.—The prisoner, Gungaram, denies the crime and states, that the witnesses above all told lies, that how was it possible for them to say who had stabbed the deceased among so many prisoners in the jail, that he never crept below the platform or did anything of the sort and never had a quarrel with any one.

Has no witnesses to call.

The defence is closed.

Verdict of Jury.—The jury find the prisoner *guilty*.

Opinion and sentence of the court.—The court concur in the verdict, and in the absence of any extenuating circumstances considers that capital punishment should be inflicted; the proceedings are therefore to be submitted to the Sudder Nizamut Adawlut for its orders.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart. and Mr. J. R. Colvin.)—The guilt of the prisoner is conclusively established. The act was deliberate, in consequence of enmity towards the deceased, owing to a quarrel of his with another convict, Thakooree, a friend, and, as is said, gooroo of the prisoner. The case shows no circumstance of extenuation, and we sentence the prisoner, Gungaram, to suffer death.

We observe that the commissioner should have given a general statement of the facts of the case, and of the evidence of the several witnesses in his letter of reference.

The declaration of the deceased, taken on the morning after he was stabbed, ought to have been placed with the record of the sessions trial. All such declarations also should bear on them a note of the precise hour of the day at which they are taken. This may often be of importance in determining their admissibility and value as evidence.

The court have before remarked on the needlessly lengthened and technical terms in which charges appear sometimes to be drawn at Moulmein. In this case the charge would have been much better understood by the prisoner, and more clearly expressed by the words, "murder of Nowran Singh, by wounding him with a knife on the evening of the 13th June, of which wound he died between 1 and 3 A. M., on the morning of the 17th June."

Inquiry will, of course, have been closely made by the jail authorities as to the manner in which the prisoner became

possessed of the knife, with reference particularly to his own statements on the point, after his apprehension.

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Case of
GUNGARAM.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND BHOWANEE KANT SURMAIL
versus

CHAND KOOMAR (No. 1), TARACHAND (No. 2),
SOLIM NOSYA (No. 3), NUTIB NOSYA (No. 4),
MUNGLA NOSYA (No. 5), BHOMDOO NOSYA
(No. 6), AND RUSOOLA NOSYA (No. 7).

CRIME CHARGED.—1st count, having committed dacoity in the house of the prosecutor and plundered property, value rupees 154-2 annas; 2nd count, being accomplices to the above dacoity; 3rd count, prisoners Nos. 1 to 3 and 5 to 7, taking and having in possession property acquired by the above dacoity, knowing it to be so acquired, and 4th count, prisoners Nos. 1 to 7, having belonged to a gang of dacoits.

RUNGPORE.

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Case of
CHAND KOO-
MAR and
others.

CRIME ESTABLISHED.—Dacoity.
Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 9th May 1853.

Remarks by the officiating sessions judge—From the statement of the prosecutor and witnesses it is shown that a dacoity took place, at the prosecutor's house, on the night of 14th of January 1853, and some 150 rupees worth of property was taken away. The prosecutor recognised prisoners, Nos. 1 and 2, who were also recognized by witnesses, Nos. 1, 2, 3 and 5. Witness, No. 1, also recognized prisoners, Nos. 3 to 7, and witness, No. 4, the prisoner, Chand, No. 1. Property was found in the house of all the prisoner's houses except Nutib's and recognized as the prosecutor's by witnesses, Nos. 2, 3, 4, 6, 27, 28 and 29.

Seven per-
sons convicted
of dacoity by
the sessions
judge and sen-
tenced to ten
years' impri-
sonment. In
appeal convic-
tion of two
confirmed, the
others acquit-
ted.

The prisoners all plead *not guilty*.

No. 1, Chand Koomar, offers no defence.

No. 2, Tarachand says, he has a quarrel with prosecutor and calls witnesses to good character, but his six witnesses, all of his own family, testify to his bad repute.

No. 3, Solim Nosya denies; cannot say who placed the property found there; pleads good character; witnesses three in number all state he is a budnash and has been taken up for cattle-stealing.

No. 4, Nutib Nosya denies and brings his father and brother to say, that they buried their property because they were afraid of the darogah's visit.

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No. 5, Mungla Nosya denies and calls two witnesses, but declares the evidence of one as not the man he meant, the other witness believes him to be respectable.

No. 6, Bhomdoor Nosya denies, his first witness attempts to account for his mother having the 5 rupees. His second says he had 10 rupees a fortnight or so before the dacoity, but he does not know how he spent them and that he is a budmash. His third witness says he had 20 rupees before the dacoity, but does not know from where he got them, knows him to be a budmash and suspicious character.

No. 7, Rusoola, denies and knows nothing of the property found in his house, his two witnesses say he is a budmash.

I tried the case alone under Act XXIV. of 1843, and seeing no reason to doubt the evidence against the prisoners, convict them of dacoity.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—I concur with the sessions judge in convicting the prisoners, Chand and Tarachand, Nos. 1 and 2, who were recognized by the prosecutor and several eye-witnesses. One witness only deposed to recognizing the others and on his statement they were apprehended; but the finding of the property, which is alleged against them is open to question, except in one instance the articles sworn to were not found in their houses, but in the fields accessible to any one, and the spots of concealment pointed out by their wives or female relations.

Such persons would not willingly have so acted, but they are likely to have been easily intimidated and influenced by the police; no great reliance can therefore be placed on their acts or statements. The prisoners themselves have throughout denied all knowledge of these articles. I therefore convict the prisoners, Chand, No. 1 and Tarachand, No. 2, and confirm the sentence passed by the sessions judge; but not being satisfied with the evidence against the other prisoners, I acquit them.

PRESENT:

SIR R. BARLOW, BART., }
J. R. COLVIN, Esq., } Judges.

GOVERNMENT

versus

SONEEAH PAHAREEAH.

CRIME CHARGED.—Wilful murder of Gundhye Bhooiahn.
Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Monev, sessions judge of Moorshedabad, on the 28th June 1853.

Remarks by the sessions judge.—The prisoner pleaded *not guilty*.

This case is a very difficult one. The following are the facts as they appear in evidence.

The prisoner, the deceased, and the wife of the deceased, Patassee Bewah, in the forenoon of the day of the fatal occurrence, left their village together and went to another village to purchase spirits. The name of the village was Luckhunpore. The deceased bought four annas worth of spirits at the shop of one Bulloram Shaha, of which he poured three annas worth into a *bhâr* (a kind of earthen pot) and they drank the rest. The prisoner bought two annas worth, which they took to the *mâth* of Luckhunpore and drank. It would appear that after they had been drinking, a quarrel ensued, during which Patassee Bewah returned home with the remainder of the spirits in the *bhâr*, leaving the prisoner and the deceased together, both the worse for liquor. A few hours after the prisoner returns to his village, goes to Patassee Bewah, and asks where Gundhye (the deceased) is, she tells him *he* ought to know, as she had left them together. He then proceeds to his wife, tells her that some one had been murdered, and that they must run away, upon which he starts off and she follows him till they separate, he going to Barromassin, and she to her mother's house at Callapahar. It is in evidence that the prisoner took his bow and a couple of arrows with him when the party started for Luckhunpore, and on his return to his village, after the drinking and the quarrel, it was observed that he had only *one* arrow.

Patassee Bewah heard from the prisoner's wife, Jahree Aworuth, what the prisoner had said to her regarding a man being murdered, and this aroused her suspicions, and she and her sister-in-law, Dookhnee, another wife of the deceased, made search for him. He was found lying senseless under a tree not quite a mile from the spot where they had been drinking

MOORSHEADABAD.

1853.

August 9.
Case of
SONEEAH PAHAREEAH.

Prisoner charged with wilful murder, convicted of culpable homicide and sentenced to five years' imprisonment.

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SONEEAH PA-
HAREEAH.

and with an arrow wound upon his breast fresh and bleeding. They both with others passed the night near the body. The deceased never spoke and died during the night. The arrow had penetrated to the chest. There was no proof of previous enmity or quarrel between the prisoner and the deceased. They were relatives.

The prisoner denied the charge in the sessions court, but confessed both before the darogah and the magistrate.

It is proved in evidence that his confession on both occasions was voluntary.

The day of the fatal occurrence the darogah was on the spot instituting enquiries and taking evidence, and the prisoner in answer to the charge then made the following statement, that the deceased wrested with force his bow and arrows from him and ran after him to shoot him, but being drunk he fell down, and one of the arrows stuck in his breast, upon which he ran away being afraid of the consequences.

The next morning about 9 A. M., he made the following voluntary confession, that while they were drinking under the tree, the deceased quarrelled with his wife on suspicion of her having an illicit intercourse with him (the prisoner) and that he afterwards turning towards him threatened to take his life, upon which he ran away and the deceased with a lattee in his hand ran after him, and at last finding he could not escape him, and that he was bent upon taking his life, he shot him in the breast with one of his arrows, which was poisoned, and the deceased fell to the ground and soon after died from the effect. He was not aware that he was dead when he fled from his house. He also stated that he was afraid to make this confession the previous day. The same confession with a few additions was repeated before the magistrate.

It was not proved that any criminal intimacy existed between the prisoner and Patassee Bewah, one of the wives of the deceased; though a suspicion of the fact could not but arise during the trial. Heera Bhooiahn brother of the deceased stated as much. The sessions court directed a local enquiry to be instituted regarding this point from which nothing against the prisoner was established.

If the fact had been proved it might have led to a violent presumption that the prisoner and Patassee Bewah had arranged the drinking scheme to further a criminal design, and that in order to get rid entirely of the husband, or because that, he may at that time have been in the way and have interfered with their plans, the deceased was made a victim to their passion. In such case the presumption would have extended to the guilt of the prisoner as the principal in the commission.

of the murder, and of the women as a *particeps criminis* aiding and abetting it.

There is not however sufficient ground for such a presumption, although the law officer in his *futwa* states his belief, that a criminal intimacy existed between the parties, and that the deceased met with his death at the hands of the prisoner in consequence of such intrigue.

There is no eye-witness to the murder and the case rests mainly on the confession of the prisoner.

It would be unjust and a dangerous precedent in general to take in a serious charge of this nature, involving the life of the person accused, part of his confession and not the whole, and filling up what was wanting by such circumstantial evidence as the court could credit to pass judgment.

The prosecutor, the prisoner and the witnesses are all hill people, and it is I believe a fact, and cases in the courts both civil and criminal establish it, that they are more truthful generally in their statements than people of the plains. I should be inclined therefore to take the whole confession of the prisoner as it stands, and give him the benefit of any part of it that could extenuate the crime laid to his charge. It is however a singular confession and there are two points in it difficult to deal with. The prisoner states that the deceased abused him for his intimacy with his wife, and seized a branch of a tree and pressed it against his neck, when he extricated himself and ran away, that the prisoner followed him with a *lattee* in his hand and threatened to kill him, that he ran above a mile, when feeling exhausted and foot-sore and thirsty he stopped, and begged the deceased to run no more, and asked him if he intended to kill him, and on his repeating the threat, that excited by liquor and in self-defence he shot one of his poisoned arrows at him and hit him in the breast. The distance pointed out by him to the darogah, from the spot where he shot the arrow to the spot where the deceased fell, was found to be eighty paces by measurement; supposing these facts to be true, the question arises how far the prisoner was justified under the circumstances in shooting a poisoned arrow. There may not have been at the time any malice *prepense* or expressed, but it might be implied by the knowledge of the arrow being poisoned when it was shot; if it is not implied the act would be manslaughter. Again if it is shown that the prisoner not only met with considerable provocation but was in such imminent danger of his life, that there was no way of escape except by shooting the arrow, the homicide in such case might be justified.

Some of the witnesses deny that the deceased had a *lattee*. Dooknee Bewah, his wife, and Rama, his cousin, depose to the

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fact. If the evidence of the former is believed and the deceased ran after the prisoner without a *lattee*, however great the provocation from abuse, and however violent the threats he used, the prisoner armed as he was could not have been in imminent danger of his life, and the shooting of the poisoned arrow could not be justified as an act in self-defence, or in other words of justifiable homicide. The *distance* at which the arrow was shot would seem to lessen too the force of the prisoner's plea that his life was in *imminent* danger. It is possible that the arrow may have been shot at the distance stated, and two witnesses declare that the prisoner was a good shot and could hit an object at that distance, but the fact appears improbable with reference to the conversation which the prisoner declares took place between him and the deceased before he shot the arrow. It is not likely that such a conversation should have been kept up at such a distance, and it is not probable that a man, even if he were dexterous with the bow, would shoot an arrow so far off to save his life, when he could keep it for closer and surer execution.

The case is one of great difficulty resting as it does mainly on the confession of the prisoner, some parts of which appear to be improbable.

In such cases however where the circumstantial evidence without the confession is not sufficient for conviction, and the confession to a great extent is relied on, it is consistent I think with justice, to give the prisoner the benefit of any doubt arising from the improbability of parts of the confession, when the improbability is capable of being reasonably explained to the prisoner's advantage. If the prisoner has given a true statement of the quarrel with the deceased, of the attack made upon him, and the threat to take his life, of his attempt to escape, and the pursuit, and lastly, of his shooting the arrow at the deceased, when he heard from him that he was bent upon carrying his threat into execution, the improbability of the distance of the shot, as pointed out by the prisoner, may be explained by both parties at the time, being excited with what they had drunk, and the prisoner especially by the fear of the hot pursuit, and the sudden determination to rid himself of his pursuer, all which might create some confusion of mind, and an after-thought not being able to recall the exact distance, of the shot, the prisoner might have magnified the distance, thinking it would tell to his advantage.

Hill people always carry poisoned arrows. The fact of the arrow being poisoned would not materially affect the case, as although the body of the deceased was in too decomposed a state for the medical officer to ascertain the original appearance of the wound, he stated it was sufficient to cause death, even

if the point of the arrow had not been poisoned. I would not therefore give too much weight to this and admitting the fact, as deposed to by two of the witnesses, of the deceased having a *lattee* with which he threatened the prisoner's life and the truth of the rest of his confession, with the improbability of the distance explained, there remains only to consider whether the prisoner's life was in *imminent* danger, and whether he could have saved it in *any other way* than by shooting the arrow at the deceased. On this point I am not satisfied, and could not therefore acquit the prisoner on the ground of justifiable homicide. I convict the prisoner of culpable homicide, and as the law officer in his *futwa* convicts of murder barring capital punishment, I submit the case to the Sudder Nizamut Adawlut, recommending that under the circumstances the prisoner be sentenced to five (5) years' imprisonment with labor in irons.

I have only to add that I put no faith whatever in the statement of Patassee Bewah, regarding the rupees 4 she said her husband had with him when they all went to the grog-shop of Bulloram Shaha, none of which was found on his person. The statement was contradicted by the person from whom she asserted her husband had received the money. Had her assertion been proved, a different motive might have been ascribed to the prisoner for the fatal act which would have changed the complexion of the case, and thrown great doubt upon his confession. It is to be regretted, that Bulloram Shaha, at whose shop the parties drank part of the liquor they purchased and for which they paid, was never examined by the darogah and never sent for by the magistrate. His evidence might have cleared up one or two points when he was summoned by the sessions court, the darogah reported that he was dead.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. J. R. Colvin.)—The circumstances of this case are fully and correctly detailed by the sessions judge. It does not appear from the prisoner's own statements in his detailed confessions that he was in imminent danger of his life, for the deceased was at some distance from him when he was shot with the arrow. We cannot, therefore, altogether exonerate the prisoner. We concur in convicting the prisoner of culpable homicide and in the sentence proposed by the sessions judge.

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Case of
SONEEAH PA-
HARIAH.

PRESENT :
J. DUNBAR, Esq., Judge.

PUDDORUTH LALL AND GOVERNMENT
versus
RAMIYAD DHOONEAH.

SHAHABAD.

—
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August 9.
Case of

RAMIYAD
DHOONEAH.

A boy of apparently fifteen years of age, convicted of wilful murder attended with theft of ornaments, sentenced to imprisonment for life.

CRIME CHARGED.—Wilful murder of Imrit, a boy, cousin of Puddoruth Lall, the prosecutor, attended with theft of ornaments, valued at rupees 28-12.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 12th July 1853.

Remarks by the sessions judge.—The facts of this awful murder are detailed in the prisoner's confession made first before the darogah, and repeated, with little variation, before the magistrate.

The murderer, a boy of about fifteen, and the deceased was ten years old.

The prisoner, annoyed with the child on account of a petty quarrel about a goat, enticed him on the plea of fishing to a well, situated apart from the village and (as appears from the evidence) in a somewhat secluded spot and then, after striking him on the head with an iron *khoorpee*, pushed him headlong into the water. Whether the poor child was intercepted in his fall or rose after the first immersion, does not appear, but he contrived to take hold of a piece of wood which was placed diagonally across the well just above the surface of the water and seated himself upon it.

While thus seated the prisoner deliberately pelted him with clods of earth, but finding that this was of little use, he feigned compassion, and as if with a view to save the child's life, tied two long pieces of cloth together and cast it down, the poor boy grasped it, and the prisoner then pulled him up hand over hand to the brink of the well then seized him by the throat, strangled him and threw him back.

These facts are fully corroborated by the circumstantial evidence.

The deceased having been seen the evening previous in company with the prisoner, he was no sooner missed than enquiries were made of the latter and this confession was the result, the child's ornaments were found in the premises (or rather his father's house) the body was found in the well, the blows on the forehead with the *khoorpee* exactly tallied with the prisoner's statement, and the medical officer's evidence proves that death was caused by strangulation.

Both confessions are duly established.

The prisoner pleaded *not guilty* before the court, but offers no evidence in his defence.

There can be no doubt whatever of his guilt.

The *futwa* convicts of wilful murder but declares *kissas* barred on account of the prisoner's age. A second *futwa* declares that the prisoner, but for his age, would be liable to *kissas*.

I confess myself to be much perplexed as to the sentence.

Looking at the conduct of the prisoner it is scarcely possible to conceive a more awful exhibition of unrelenting cruelty.

The ferocity of the first attack, the cold-blooded deliberation shown in pelting the child from his precarious resting place, and the thoughtful ingenuity exhibited in the device to bring his victim again within his grasp and the savageness of the closing act, all these features serve to give a hideous character to the deed and to show that the "malicious discretion" which our law holds to supply the defect of years was signally operative in this wretched lad's mind.

Accordingly under the stern requirements of the English law the prisoner deserves death, and it is my duty to recommend it.

But I feel an unconquerable repugnance to the idea of a capital sentence being passed on so young a criminal, and shall be glad if the Court see fit to adjudge a mitigated punishment.

I observe that the magistrate's mode of questioning the prisoner is wrong and altogether opposed, not only to the established principles of jurisprudence, but to the specific instructions issued on the subject.

The first question put to the prisoner is.

" You murdered the deceased and threw his body into a well, what is your answer to this ? "

I need scarcely comment on the impropriety of this mode of examination.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner when asked his age at the trial stated it to be eleven years, but both in the mofussil and before the magistrate, he stated it to be about fifteen, and this is the probable age, recorded by the sessions judge.

The charge against the prisoner is fully and clearly established. The murder was unquestionably a cruel one. I think however, with reference both to the old precedents in the published reports of this Court and to the effect which a sentence of death in the case of so young a criminal would probably have upon the public mind in this country, that the last penalty of the law may be spared. I accordingly sentence the prisoner to be imprisoned for life with labor and irons in the Allipore jail.

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Case of
RAMIYAD
DHOONEEAAH.

PRESENT:
J. DUNBAR, Esq., Judge.

SHEIK GOLAP

versus

SADUCK

TIPPERAH.

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case of
SADUCK.

Prisoner
convicted of
aiding and
abetting in ag-
gravated cul-
pable homicide
sentenced to
three years'
imprisonment.
Appeal re-
jected.

CRIME CHARGED.—1st count, aiding and abetting in the wilful murder of Aynuddeen, *alias* Anoo, son of the prosecutor; 2nd count, aiding and abetting in wounding Mahomed Ameer, and 3rd count, riot attended with the murder of Aynuddeen, *alias* Anoo, and wounding of Mahomed Ameer.

CRIME ESTABLISHED.—Aiding and abetting in the aggravated culpable homicide of Aynuddeen, *alias* Anoo.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 14th June 1853.

Remarks by the sessions judge.—This is a continuation of the case of aggravated riot reported by me for the orders of the Court, on the 28th of March 1853, my letter, No. 124, commencing with the following outline of the circumstances attending it.

“ On the 6th of November 1852, the chowkeedar of mouzah Chandpore gave information to the jemadar of a neighbouring pharee, that an affray had occurred during the morning of that day between Amber Allee and Tumeezooddeen (tehsildars of Nubokishen Roy and Raj Kishen Roy, zemindar of the 12 annas 12 gundah share of pergannah Seryle) on the one part, and the ryots of the village of Chandpore on the other, in the course of which the tehsildar’s party had speared Aynuddeen in the lower part of the abdomen, causing immediate death, while many others had been wounded.”

The prisoner who was apprehended after the submission of the report alluded to, pleaded *not guilty*, but called no witnesses to maintain his defence.

The degree of proof that the prisoner was one of the party concerned in the riot, which was attended with such serious consequences, was both in my own opinion and in that of the Mahomedan law officer sufficient for conviction.

He was named by the plaintiff and by the witness, No. 12, Kurrimbuksh, at the thannah and before the sessions court, when the previous trial was held before his apprehension. He was also named by the second and third witnesses, Jahbuksh and Nasheer, at the thannah, before the magistrate and before the sessions court on the occasion of the previous trial, and by the fourth witness, Noorbuksh, at the thannah, and before the

judge on the same occasion. The proof against him now, when on trial in person, is also in my opinion complete.

The Mahomedan law officer concurred with me in opinion, that the prisoner was guilty of aiding and abetting in a serious riot attended with culpable homicide of Aynuddcen, and declared him liable to *tazeer*. I sentenced him therefore as shown in column 12.

Sentence passed by the lower court.—Imprisonment without irons for three (3) years from this date, and to pay a fine of rupees fifty (50), on or before the 28th June 1853, or in default of payment to labour until the fine be paid or the term of the sentence expires.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence for the prosecution fully establishes the guilt of the prisoner, Saduck, who had no exculpatory evidence to offer on the trial. The sentence is confirmed. An appeal preferred by the other prisoners was rejected by me on the 26th April last. No further orders are necessary in regard to them.

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 Case of
 SADUCK.

 PRESENT :

J. DUNBAR, Esq., Judge.

MUSST. BIMLAH

versus

 RUNGLALL SINGH (No. 4), AND SHEIKH HAROO,
 (No. 5.)

CRIME CHARGED.—1st Count, culpable homicide in having so severely beaten Anundo Doss, the husband of the prosecutrix, as to cause his death, and 2nd count, aiding and abetting in the above.

MIDNAPORE.

 1853.

*August 9.
 Case of
 RUNGLALL
 SINGH and
 another.*

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 30th April 1853.

Remarks by the sessions judge.—The prosecutrix deposes, that on the night of the 10th February she was informed by a neighbour, the witness Adree, that her husband was lying insensible on the banks of a tank at a short distance from the house. She went to the spot, accompanied by her sister-in-law, and found her husband in the state described; they carried him home and after giving him some water he recovered his senses. He then stated that he (on the plea of his attempting to assist another ryot to escape) had been seized by the prisoner, Runglall Singh, Sheikh Haroo and others, peadahs,

Two prisoners convicted of culpable homicide and sentenced to seven years' imprisonment. Appeal rejected.

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Case of
RUNGLALL
SING and
another.

servants of the *talookdar* Oodhublall Khan under whose instructions they acted, who, carried him away to the house of Dhurponarain Ghuttal, assaulted him with sticks and shoes, burnt him with fire, and then threw him down on the spot where he was discovered. This statement the deceased, Anundo Doss, repeated to the thannah mohurir, who recorded his dying deposition on the afternoon of the 12th February, a short time before he expired from the effects of the beating he had received ; according to the inquest held in the mofussil the bone of the right arm was fractured and there were several marks and bruises on different parts of the body as if inflicted by sticks and shoes, the skin on the right side bore the appearance of having been scorched with fire. The deposition of the sub-assistant surgeon corroborates in most points the inquest ; he deposes that the immediate cause of death was extravasation of blood upon the brain, that this might have been and probably was the result of the ill-usage the deceased had evidently received, of which his body bore the marks, though there were no external injuries on the head corresponding with the seat of injury on the brain. The witnesses for the prosecution depose, that the deceased was brought to the house of Dhurponarain Ghuttal, where the *talookdar* was then lodging, on the evening of the 10th February ; that he was there severely beaten and burnt by the parties in whose custody he was, amongst whom were the prisoners, Runglall Singh and Sheikh Harro, who afterwards took him away and they the witnesses never saw him again alive. It appears that Oodhublall Khan had gone to the village of Burda to the house of Dhurponarain some days previously, with a view to settle accounts with the ryots in the neighbourhood. He was accompanied by a body of *nukdees* who had arrested some recusant *asamees* and two of them the witnesses, Mudhoo Ghuttal, No. 6, and Kisto Mytee, No. 10, had been confined on the morning of the 10th February in a silk-worm house, the door of which looked on the spot where the assault on deceased was made. They therefore had a full view of all that occurred and were able by the aid of a large fire that was burning on the spot at the time, the weather being cold, to identify four of the persons who assaulted the deceased, the two prisoners amongst them. The testimony of these two witnesses is fully corroborated by that of other eye-witnesses who had come to the *talookdar* at Dhurponarain's house to adjust their accounts. This evidence together with that given by the deceased in *articulo mortis*, when there is every reason to suppose he would not exaggerate or distort what had occurred, leaves no doubt on my mind that he is the victim of a brutal assault, made on him by the prisoners and others. It is not

clear who inflicted the blows that caused death, but it is abundantly proved that the prisoners were accomplices in the assault, whatever weapons they might have used in inflicting it. It was I conceive not their intention to deprive the deceased of life, but to punish him severely for attempting to instigate the parties above alluded to, as confined in the silk-worm house to make their escape. The prisoners also acted I conceive under the immediate instructions, if not in the actual presence of their employer, the talookdar, who as is usual on similar cases has evaded responsibility by throwing it on his creatures with the aid and connivance of the police. The conduct of the phareedar, whose chowkee was within half a mile of the spot where the assault occurred, and who never made any report to the thannah is most reprehensible, and the fact of the assault having occurred would never have been known at all had it not terminated fatally. The phareedar has very properly been dismissed from his office by the magistrate. The prisoners in their defence set up an *alibi*, which they fail to substantiate. The assessors declare the prisoners guilty of aiding and abetting in an assault on the deceased, Anundo, from the effects of which he died. In this verdict I concur, and, deeming the prisoners guilty of culpable homicide, sentence them as indicated in the statement.

Sentence passed by the lower court.—Seven (7) years' imprisonment each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The unfortunate man must have been cruelly beaten and the evidence sufficiently proves, that the prisoners took an active part in the maltreatment, which caused his death. I concur with the sessions judge and the assessors, and confirm the sentence.

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Case of
RUNGLALL
SING and
another.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND ANOTHER.

versus

PURMANUND MUNDUL, ALIAS PURMA CHASSA.

HOOGHLY.

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August 9.
Case of
PURMANUND
MUNDUL,
alias PURMA
CHASSA.

Prisoner convicted of dacoity and receiving plundered property knowing it to have been obtained by dacoity, sentenced by the sessions judge to fourteen years' imprisonment. In appeal, sentence reduced to seven years, the receiving plundered property not being proved.

CRIME CHARGED.—1st count, dacoity in the house of Paroo Bewa, and 2nd count, receiving plundered property knowingly.

CRIME ESTABLISHED.—Dacoity and receiving plundered property, knowing it to have been acquired by the above dacoity.

Committing Officer—Baboo Kissory Chand Mitter, deputy magistrate of Jehanabad in zillah Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 23rd March 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed with six others, and stood charged with dacoity and receiving and having in possession plundered property, acquired by the above dacoity, knowing it to have been stolen. He was recognized by the prosecutrix, and four of the witnesses examined in the trial, and confessed the crime both before the police and the deputy magistrate of Jehanabad. A small brass-cup was found in his house, which was identified as part of the plundered property. The prisoner denied the charge before this court, and said that his mofussil confession was extorted under ill-treatment, and his foudaree confession merely transcribed from the record of the case before the deputy magistrate. He disclaimed the property found in his house, and stated that it belonged to his maternal aunt, whose house adjoins his in the same inclosure. He named three witnesses to character, but none were present at the trial. His two confessions are consistent, and disclose the same details as connected with the commission of the dacoity and I have no doubt of his guilt.

Sentence passed by the lower court.—Imprisonment with labor and irons in banishment for fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prosecutrix and several witnesses have sworn from first to last, that they recognized the prisoner while the dacoits were plundering her house. He himself made full confession both in the mofussil and before the deputy magistrate. This evidence is sufficient for conviction on the 1st count, but I do not think, the 2nd count is established. It is true, the brass cup is sworn to on behalf of the prosecutrix, but identification in the case of a small utensil, of a kind in common use,

value only 3 pice, must be very doubtful, and the prisoner denies that it formed any part of the plundered property. He says in fact in his confessions, that he got no portion of the booty. With reference to these observations, I reduce the sentence to imprisonment in the zillah jail with labor and irons for seven (7) years.

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Case of
PURMANUND
MUNDUI,
alias PURNA
CHASSA.

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

BYCOONT MOOKERJEE (No. 3), BUNGSHEE GHOSE (No. 4), SREENEEBASH JALAY, ALIAS CHEENEE-BASH MAJEE (No. 5), GREEDHUR GHOSE GOALLA (No. 6), RYE CHURN GHOSH GOALLA (No. 7), SHADOO GOROWN (No. 8), SHEIKH ARMAN, CHOWKEEDAR (No. 9), AND BEEHAREE SINGH, ALIAS KORMA MOSULMAN (No. 10).

CRIME CHARGED.—1st count, with dacoity in the house of Jetoo Nikaree at Damordah, and 2nd count, with having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tricd before Mr. J. S. Torrens, sessions judge of Hooghly, on the 16th July 1853.

Remarks by the sessions judge.—Prisoners, Nos. 3 to 10, on the calendar, were committed by the commissioner for the suppression of dacoity, exercising powers of magistrate in this district, on the specific charge of a dacoity in the house of Jetoo Nikaree, on the night of the 12th October 1852, and on a 2nd count, for belonging to a gang of dacoits—Nos. 3 to 9, plead *not guilty* before the sessions, No. 3, having confessed to the late commissioner to both charges, on the 20th December 1852, and to the present commissioner, on the 18th of April 1853. Prisoner, No. 10, Becharee Singh, denied the charges before the commissioner, but pleads guilty before the sessions; a singular occurrence, but may be accounted for by the number of prisoners, who have lately been made approvers.

The papers specified contain record of the dacoity, for which the special charge is made, having been perpetrated, as well as of dacoities which are stated by the approvers, and in the confession of the prisoner, No. 3, Boycoont Mookerjee, to be those in which the prisoners were concerned with them.

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Case of
BYCOONT
MOOKERJEE
and others.

Six prisoners convicted of dacoity sentenced to imprisonment for life in transportation. A seventh prisoner sentenced to ten years' imprisonment.

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Case of
Boycoont
Mookerjee
and others.

The approver, Kylas Tantee, witness No. 1, stated in the confession, which he made before the commissioner, on the 20th December, that the prisoners, Nos. 3, 4, 5, 6, 7, 8 and 10, had accompanied him, and borne a part in the dacoity at Damorda on the house of Jeetoo Nikaree, that they were associated in a gang with him and had committed several other dacoities also along with him. In his evidence before the sessions he repeats these allegations without material variation as regards the above prisoners.

The confession of the approver, Zamcer Shikaree, witness, No. 3, who was mentioned by the above approver in his confessions, was taken on the 29th of March. In this, he names prisoners, No. 3, 4, 6, 7, 8 and 10, as having accompanied him in this dacoity and being engaged with him in a gang, and he deposes to the same effect before the sessions.

The approver Haboo, witness, No. 2, made his confession before the commissioner, on the 17th January 1853; he also was mentioned in the confession of Koylas, and in his own confession, he names the prisoners, Nos. 4, 6, 7, 8 and 10, as concerned in the dacoity with him and others. Before the sessions, he deposes to the same purport as regards these prisoners.

It is to be observed that in the confession of Koylas, witness, No. 1, before the commissioner, there is no mention of the name of the prisoner, No. 9, Sheikh Arman. This prisoner, he points out before the sessions to have been one of the gang, on the occasion of the Damordah dacoity. In the confession of Zameer, there is no mention of the names of prisoner, No. 5, Sreeneebash, or No. 9, Sheikh Arman; before the sessions, he points them both out, and witness, No. 3, in his confession also did not name prisoners, No. 3, Boycoont Mookerjee, No. 5, Sreeneebash, or No. 9, Sheikh Arman, but he points them all out before the sessions.

In respect to the omissions noticed in the foregoing paragraph: as above specified, of mention of prisoners, Nos. 3 and 5, I am not of opinion that such omissions affect the validity of the testimony against them, as though No. 5, is not named by two of the approvers; he is alluded to by them as having provided one of the boats, in which the gang proceeded and the omission of the name of No. 3, Boycoont Mookerjee, is overcome by his own free and voluntary confession before the commissioner, to which no doubt whatever can be attached.

Prisoner, No. 9, who was arrested only on the 2nd May 1853, it is to be observed, was not named in any of the confessions of the approver or in the confession of prisoner, No. 3, all taken so long previously to his arrest; he was arrested on the identification of the approver, Koylas, who states before the sessions that he only knew him well since the dacoity at Damordah and

that he had been with him in no other dacoity. Zamcer, No. 3, and Haboo, No. 2, also depose in the sessions that they did not know Arman or his name, before that dacoity; that he had committed no other dacoity with them, and Haboo, witness, No. 2, states he was brought when they were setting out, by Tincowree, one of the gang, from Calcutta, whilst Koylas, No. 1, states that he joined them on their calling at Beruagore on their route, when they were joined by Zamcer.

Considering there being no mention of this prisoners name in the confessions, the vague nature of the evidence as to his joining in the Damordah dacoity, of the approvers knowledge of him, the discrepancy as to the place of his journey in the depositions of Koylas, No. 1, and Haboo, No. 2, I am not of opinion that the charges are established against him, and I acquit him accordingly. In respect to all the others, seeing no reason to impeach the evidence of the approvers, I find them guilty and recommend them to be transported beyond seas, subject to labor and imprisonment in irons for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The confessions of the approvers, as stated by the commissioner for the suppression of dacoity, in the calendar, were taken with such precaution as to prevent the possibility of collusion. The details of the Damordah dacoity, as given by all three correspond in all material points. Their statements are corroborated by the deposition of a person who lived in the house, and evidence of the occurrence of the several other dacoities mentioned by the approvers is furnished in the roobuccaries and reports attached to the record.

The evidence against the prisoners stands thus.

No. 3.—Two approvers swear that he was present in the Damordah dacoity, also his own confession before the commissioner, that he was engaged in this dacoity and in seven others.

No. 4.—His presence in the Damordah dacoity sworn to by all three approvers, according to their evidence engaged in three other dacoities.

No. 5.—All three approvers swear to the prisoner having accompanied them to the Damordah dacoity, he was mentioned by name in the confession of one. The other two in their confessions referred to a boat used for the occasion, and now they swear that it was the prisoner's boat, they did not know his name before. All three say that the Damordah dacoity is the only one in which he was ever engaged with them.

No. 6.—All three approvers swear that he took part in the Damordah dacoity, engaged in six other dacoities.

No. 7.—All three approvers swear that he took part in the Damordah dacoity, engaged in three others.

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No. 8.—Swear, that he took part in the Damordah dacoity, engaged in four others.

No. 10.—Ditto as to the Damordah dacoity, engaged in three others and himself pleads guilty before the sessions judge.

Concurring in the conviction, I sentence the prisoners, Nos. 3, 4, 6, 7, 8, and 10 to imprisonment for life in transportation beyond sea, and the prisoner, No. 5, to imprisonment for ten (10) years with labor in irons.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

KANAI MOOLLAH.

RAJSHAHYE.

1853.

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Case of

KANAI MOOL-
LAH.

Prisoner
convicted of
aggravated
culpable homi-
cide, having
killed his wife
under circum-
stances of irri-
tation caused
by her mis-
conduct, and
sentenced to
fourteen years'
imprisonment.

CRIME CHARGED.—Wilful murder of Aina Aurut.

Committing Officer—Mr. F. L. Beaufort, officiating joint magistrate of Purnah.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 21st July 1853.

Remarks by the sessions judge.—The jury convicting the prisoner of murder, and as I consider the crime to amount to murder, the reference is unavoidable.

There is no eye-witness, and no *post mortem* examination was held on the body, but there can be no doubt the deceased died from violence, and it was attempted at first to set up a defence that she had hung herself.

The first witness examined, No. 3, in the calendar, deposed to going to the house of the prisoner on the night of the occurrence, on hearing the voice of the deceased, that he found the door closed, and on another witness opening it, they found the deceased lying groaning on the pallet, and the prisoner standing up and apparently in a great rage. He told the prisoner not to quarrel with his wife and went away. The deceased said nothing.

The next witness, No. 4, confirms the above statement, and was the person who first opened the door of the prisoner's house, he gave his evidence with some reservation, and till he heard, and was questioned to what he deposed to before the deputy magistrate, did not come out with the whole truth.

The evidence of both these witnesses is corroborated by that of the chowkeedar, No. 15, (not examined at all in the foudarry) who also heard the deceased groaning in the prisoner's house, and on his asking what was the matter, he said she had a pain in her stomach. Next morning he saw her lying dead,

and the prisoner's mother said she had hung herself, and seeing a mark on her neck he reported to this effect at the thannah.

The evidence of the prisoner's mother (witness, No. 1,) may be rejected in *toto*, that of his aunt (witness, No. 2,) was also very unsatisfactory, and must be taken *cum grano salis*. She deposed that the deceased told her (witness) that her husband had seen her flirting with Purnsoollah, but I strongly suspect she was acting the part of a *duenna* and saw and told the prisoner what occurred at the jheel, or place where the deceased and the said Purnsoollah (the prisoner's cousin) were at the same time bathing.

The witnesses to the *sooruthal* confirm the statement made as regards the appearance of the body. There were marks on the back, belly and round the neck, none of them, however could give any opinion, as to the cause of death, and the native doctor, who saw the body when sent in, stated it was too far gone to hold an investigation.

I now come to the confessions, both in the mofussil and foudarry. They are much the same and were fully proved to have been voluntarily made by the prisoner before the thannah jemadar, and the deputy magistrate of Pubnah, the latter has the usual certificate written in English and the blanks have been filled up in Persian. I *presume* the deputy magistrate was aware what he certified to, though it would have been better if he had certified the whole in Persian.

In these confessions the prisoner admits that he saw the deceased sprinkling water over Purnsoollah, his cousin, that he taxed her with her conduct in the evening, but told her he should speak to her again on the subject. After this he went to the haut and when he retired to rest with his wife he again accused her of intriguing with his cousin, which led to an altercation, when he gave her a severe beating with his hands or fists. That she died in consequence of the blows he had inflicted when (to conceal the death) he hung up her body in an out-house.

These confessions the prisoner denied making, either before the thannah jemadar or deputy magistrate.

When called upon for his defence, he pleaded his wife had hung herself, and examined four witnesses, but none of them knew of her doing so, or had they seen her body hanging, though one of them (witness, No. 19,) saw the mark of a rope round the neck of the corpse. In short the defence was a bad one and totally broke down.

I then charged the jury (three respectable vukeels of the moonsiff's court, and all mahomedans) to consider their verdict, that as the prisoner had denied his confessions the question simply was if he had caused the death of his wife, and if

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the killing amounted to murder, or what ; that it was clear the outer-door was closed when the first two witnesses went to the house, and if reliance was to be placed in the prisoner's confessions he had threatened his wife in the evening before he went to the *haut*, and on his return shut himself up with her, when the altercation between them took place, and which had terminated so fatally for her.

They, after retiring, gave in a written verdict, which has been recorded.

The prisoner is a short dwarfish looking man, but strong above the waist. What provocation he met with when shut up with his wife it is impossible for me to say, he may have witnessed her levity of conduct in the morning at the *jheel*, but my opinion is, he only heard the particulars from his aunt. He may have only intended giving her a good beating, but these violent attacks on women are not only brutal in themselves, but so often prove fatal, that a person resorting to them must, I apprehend, stand the consequences.

If not guilty of murder, he was guilty of aggravated culpable homicide, and has incurred the next severe sentence to death, imprisonment in transportation for life.

With this opinion I leave his case in the hands of the court. A petition given in by his mother after the completion of the trial, has been appended to the transcript of the proceedings of this court, at *her request*.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The assault may have been premeditated, as when the prisoner told his wife in the evening that he would speak to her again on the subject of her conduct, towards Purnsoollah, he probably contemplated giving her, a beating, but there is nothing in the evidence of the witnesses, or in the confessions of the prisoner, to induce a belief that murder was intended. The prisoner made use of no deadly weapon, he struck her, he says, with his open hand on the face, and with his fist doubled on the ribs, and he distinctly says in one part of his confession that he supposes she had died from the effect of these blows with the fist. She did not die immediately, however, and the steps which he took afterwards to conceal the death, show that such a fatal termination to his violence was not expected.

Allowance must be made for the irritated feelings of the man. According to the statement in his confession, he had frequently before had occasion to remonstrate with her in regard to her intriguing with Purnsoollah. She disregarded his remonstrances, and was again guilty of light and unbecoming conduct, under his own eyes. I convict the prisoner of aggravated culpable homicide, and sentence him to imprisonment for fourteen (14) years with labor and irons.

PRESENT:
J. DUNBAR, Esq., Judge,
AND
H. T. RAIKES, Esq., Officiating Judge.

GOVERNMENT

versus

SHEIKH BOODYE.

CRIME CHARGED.—1st, perjury in having on the 5th July 1853, corresponding with 22nd Assar 1260, deposed under a solemn declaration taken instead of an oath, before the magistrate of Tipperah, that he “had no connexion nor relationship with Hillal Gazie, plaintiff,” such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; and 2nd, perjury in having on the 5th July 1853, corresponding with 22nd Assar 1260, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of Tipperah, that he “had no connexion nor relationship with Hillal Gazie, plaintiff,” and in having on the same date again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the same officer, that he “was a cousin, by father’s side, of Hillal Gazie, plaintiff.” Such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.
Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 15th July 1853.

Remarks by the sessions judge.—The prisoner was subpoenaed as a witness in a case brought by his cousin, Hillal Gazie, under Act IV. of 1840. His deposition was first taken in the assistant magistrate’s cutcherry, and in that gentleman’s presence on the 8th ultimo. When completed, the witness seems to have departed without his evidence being read before the assistant magistrate, but was again sent for by the magistrate through the police, and his evidence, as well as that of the other witnesses, heard by that authority in their presence and in that of the vakeels concerned in the case. When the reading of the prisoner’s deposition had been completed, the vakeel acting for the defendant, in the case under Act IV. of 1840, pointed out that the witness had denied all relationship to the plaintiff, whereas the contrary was the fact, and the magistrate (as the evidence had not been heard by the assistant magistrate, and could not therefore be considered complete) administered the form of solemn affirmation to the prisoner, and put

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Case of
SHEIKH BOO-
DYE.

The prisoner, who was charged with perjury, was acquitted on the ground that he may not have understood the question put to him on his answer to which the perjury was assigned, as when it was put to him in direct terms he at once gave a direct answer.

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DYE.

the question to him, whether he was, or was not, related to the plaintiff, Hillal Gazie. The reply was a distinct and repeated assertion, that he had no connection or relationship with the plaintiff. The plaintiff's vakeels now put the question to him, whether he was not a first cousin of the plaintiff, to which he replied in the affirmative, the plaintiff's father and his being brothers. He was now put on his defence when he stated, that he was rather hard of hearing and did not comprehend the first question put to him. His commitment ensued on the charge of perjury.

The prisoner pleaded *not guilty*, and dropping the plea of deafness, and declining to have his witnesses examined on that point, (one for believing which there is not the slightest foundation) pleaded that he misunderstood the word "*elaka*" to mean being indebted to or in the service of the plaintiff, and that he denied relationship with the *defendant* and *the witnesses* in the Act IV. case, but admitted being the cousin of the plaintiff.

I am of opinion that the prisoner has decidedly committed perjury. His answer to the magistrate was a clear, precise, and repeated denial of relationship to the plaintiff, (and he had made a similar denial when first examined in the assistant magistrate's cutcherry,) the word used by the magistrate being one with meaning of which all Mahomedans are well acquainted. I explain his subsequent immediate admission of the fact that he bore the close relationship of first cousin to the plaintiff: thus when the question was put to him in so many words, by the *vakeels who were conducting his cousins* case under Act IV. of 1840, he no doubt understood the question as a hint, that the truth could no longer be concealed, and that it was advisable then to admit what he had twice before denied. I observe also that the shifting nature of his defence is very suspicious. Before the magistrate he pleaded being hard of hearing; before the sessions court that he had not understood the question put to him. There is no reason to believe either plea to be founded on fact. He certainly hears perfectly well, and in my opinion as certainly understood the question put to him. In his defence he states that he was asked whether he was related to the defendant and witnesses, and answered in the negative; such was not the fact. The question was distinctly put whether he was related to the plaintiff or to the defendant, and the witnesses for the prosecution deposed, that great care was taken by the magistrate to explain to the prisoner, in his capacity of witness, the meaning of the question. They state that the word خوشی was purposely used in putting the question to him, and as I have already observed, it

is one universally understood by Mahomedans in the sense in which the magistrate used it.

Being of opinion that the prisoner intentionally denied his relationship to the plaintiff, in the Act IV. case, with the view of imparting to his evidence that weight and value, of which the fact of their being first cousins might have deprived it, I would convict him of perjury, and sentence him to three (3) years' imprisonment with labor in irons.

The Mahomedan law officer, however, acquits the prisoner on the grounds that he denied and admitted the relationship on the same occasion, and that therefore he would appear to have misunderstood the questions put to him, and that the case, under Act IV. of 1840, had been adjusted before the examination in question took place.

It is unnecessary to repeat the reasoning on which I consider the perjury to have been wilfully committed; as regards the adjustment of the case, I also differ from the Mahomedan law officer. It is true that a *razeenamah* and *safeenamah*, on neither of which any orders were passed, were filed in the case; but the former refers to a charge of *assault*, and to parties not mentioned in the case under Act IV. of 1840 with which, indeed, it does not appear to have any connection. It is dated the 2nd of June, and the plaintiff had the evidence of his witnesses taken in the case, under Act IV. of 1840, on the 8th of the same month. It is obvious that he would not have done this had he intended to adjust the case. The *safeenamah* certainly appears to refer to the case under Act IV. of 1840, but the defendant subsequently, earnestly, repudiated it as containing exactly the opposite terms to those on which alone he was willing to adjust the case, and stating that it had been fraudulently drawn up and its purport differently explained to him. There can, in fact, be little doubt that the plaintiff or his vakeels have been guilty of very gross deception, in the matter of this *razeenamah* and *safeenamah*. The defendant, being unable to read, and unable therefore to check the nature of the petitions put in, seems to have been persuaded to adjust the case. The plaintiff then puts in a *razeenamah*, which has no connection with the Act IV. case or with the land in dispute, but which the defendant believes to refer to both, and a *safeenamah* is drawn up for him by the plaintiff's *vakeel*, Akturjumma, in which he is made to resign possession of the land to the plaintiff; such fraud as this can surely not be considered a legal adjustment of a pending case.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Raikes.)—The evidence does not suffice to prove, that the prisoner deliberately and wilfully perjured himself. The word خوشی made use of, in his answer to

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the question, whether he had any connection with the prosecutor or defendant, certainly would imply that he understood the query, as applying to blood relationship ; but it is quite possible that the writer of the deposition may have used the word, on his own understanding of the words *elaka* and *sum-purko*. Be this as it may, as the prisoner at once, and immediately after, admitted his relationship to the prosecutor, when the question was clearly and distinctly put to him, a doubt must inevitably remain, as to his full understanding of the import of the question as first put : and of this doubt he should have the benefit. The question was first put in a general way and not in a direct form ; as soon as it was put in clear terms, the prisoner gave a distinct and direct admission of his relationship with the plaintiff, and, this in our opinion, exonerates him from the charge of wilful and deliberate perjury.

PRESENT :

SIR R. BARLOW, BART., }
 AND } *Judges.*
 J. DUNBAR, Esq., }

BUNGSEEBUDUN BOSE

versus

ISSUR GHOSE (No. 1), CHUNDEE CHIURN DUTT (No. 2), AND RUSSICKLALL BOSE (No. 3).

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ISSUR Ghose
and others.Three prisoners convicted
of theft and
sentenced to
four years' imprisonment.

CRIME CHARGED.—1st count, theft in the house of Sreekaunt Roy Chowdhury, (master of the plaintiff), on the night of the 15th April 1853 or 4th Bysak 1259 B. S., in which cash and property to the amount of Co.'s rupees 2,144 was stolen ; 2nd count, having in their possession a portion of the said cash and property, knowing it to have been stolen in the above theft, and 3rd count, privity after the fact to the above crime.

Committing Officer—Mr. A. Hope, officiating joint magistrate of Baraset.

Tried before Mr. J. H. Patton, officiating additional sessions judge of zillah 24-Pergunnahs.

Remarks by the officiating additional sessions judge.—The prisoners are charged with robbery of cash and property to the amount of rupees 2,144, and with receiving and having in possession stolen property knowing it to have been acquired by plunder, and with privity to the crime, and plead *not guilty*.

The owner of the property stolen was from home on the night of the robbery, and the prosecutor, his servant, did not discover the theft till the following morning, when he per-

ceived a box lying outside the premises, broken open and rifled of its contents. His suspicions became aroused, and he ran upstairs to the room where the valuables under his charge were kept. On attempting the lock, he found that it had been tampered with, but after long and repeated efforts he succeeded in opening the door, and entering the room missed a box, containing cash and silver vessels. He observed also that the door leading to the back stair-case had been forced. He then went down-stairs, and after satisfying himself of the identity of the broken box with the one that had been removed, lost no time in sending word of the robbery to the police. The mohurrir came the following day and arrested the prisoner Issur Ghose, on the suspicion of the prosecutor. That individual confessed the crime and gave up a large portion of the stolen cash. On his confession, the other prisoners were taken up, and they also confessed and produced the plundered articles. Such is the substance of the prosecutor's statement.

The two first witnesses give hearsay evidence of the robbery.

The witnesses Huludhur De, Huludhur Mungul and Raj Chunder Bose, prove that the prisoner Issur Ghose, produced from a tank, a bag of rupees containing small bags of the minor coin and rupees 18 from his person ; that the prisoner Chundee Churn Dutt brought out from a box in his room, upwards of 1,200 rupees in cash, and that the prisoner Russicklall Bose gave up some cash tied in a cloth and three silver vessels concealed under a heap of cut straw in the yard. From the record of the trial it will appear that the sums, so recovered from the prisoners, amounted in the aggregate to rupees 1,997-12 annas.

The witness Sushtibhur Potidar affirms that the silver vessels above alluded to are his property, and were pledged to the prosecutor for rupees 50 in Poos last, and the witness Goberdhun Dass confirms the statement.

The three next witnesses speak to the mofussil confessions of all the prisoners, but the records are not as well attested as they might be, and I have not filed them with the trial. There is nothing in their statements, however, calculated to create the most remote suspicion that the confessions were extorted, or obtained under the operation of any unfair or illegitimate means.

The foudaree confessions of the prisoners Issur Ghose and Russicklall Bose are next attested and proved. There is no material difference in these statements of the prisoners, and the admissions made by them before the police, and there is a circumstantiality about the recitals which, I must confess, has to my mind the semblance of truth.

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Case of

ISSUR GHOSE
and others.

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Case of
ISSUR GHOSE
and others.

The prisoners deny the charge and repudiate their confessions. The prisoner Issur Ghose avers that this case has been got up against him by the prosecutor, for refusing to bring a criminal charge against the prisoner Chundee Churn Dutt, from what motive he is unable to explain. The prisoner Chundee Churn Dutt declares himself the victim of the zemindar's animosity, for endeavouring to recover the effects and dues appertaining to a deceased brother, who served him in the capacity of treasurer, and otherwise annoying the great man, who he further alleges has in confinement the widow of his said brother ; and the prisoner, Russicklall Bose, pleads the same issue as the prisoner Issur and states, that this accusation has been brought against him because he declined to lay a criminal information against the prisoner, Chundee Churn, the zemindar having in the first instance attempted to bribe him to do so.

I examined seven witnesses for the defence, but their evidence in no way exculpated the prisoners.

The *futwa* of the law officer, for reasons assigned, acquits the prisoners and declares them entitled to their release.

I dissent from the verdict, and finding the prisoners guilty of theft of cash and property, convict them accordingly and recommend that they be sentenced to four (4) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. Dunbar).— All the prisoners confessed in the mofussil, and the prisoners Nos. 1 and 3, repeated their confessions before the magistrate. No. 2 pleaded *not guilty*.

The mofussil confessions we consider fully substantiated, by the production of the cash and other property by the prisoners from the tank, and the other places in which they had concealed it, which fact is proved by the several witnesses, who have deposed to it. The confessions before the magistrate are duly verified. The evidence against the prisoners leaves no doubt of their guilt, while that adduced in their defence is altogether unsatisfactory and insufficient. We convict all the prisoners of being accomplices in the theft charged, and sentence them as proposed by the judge.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

BADEE MYTEE.

CRIME CHARGED.—Perjury, in having fraudulently, intentionally and falsely deposed, under a solemn declaration before the law officer, with a view to mislead the said law officer, on a point material to the issue of the case, that his name was Moocheeram Mytee, his real name being in truth Baddee Mytee.

Committing Officer—Moulvee Gholam Sufdar, law officer, with the powers of a magistrate, Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 26th July 1853.

Remarks by the sessions judge.—This is a case of perjury by personation. One Moocheeram Mytee was summoned to give his evidence relating to the character of Juggernath Doss, the witness No. 10; when called into court the prisoner appeared and deposed on oath, that his name was Moocheeram Mytee and that Juggernath Doss bore a bad character. On cross-examination, he admitted that another Moocheeram Mytee had been cited and was then in Midnapore. He was accordingly sent for and confronted with the prisoner, who then confessed that his name was Baddee Mytee and not Moocheeram Mytee; that he accompanied the latter to Midnapore as his servant and had personated him in court at his instigation.

In this court he makes the same defence and pleads that Moocheeram Mytee persuaded him to personate him, as he himself was unwilling to make an oath or solemn declaration. The assessors declare the prisoner guilty of perjury. There can be no doubt that the prisoners object, in personating, Moocheeram Mytee, was to save his master from giving evidence. The prisoner is an illiterate, ignorant boor, who evidently attaches little or no value to truth, nor does he seem to understand the necessity of adhering to it if opposed to his interests. He is clearly the mere creature of a more intelligent and designing individual, who has been sufficiently cautious in suborning the prisoner to prevent the law reaching him. I concur in the verdict given by the assessors and sentence the prisoner to three (3) years' imprisonment with labor, but with reference to Clause 3, Section IX., Regulation XVII. of 1817, I beg to recommend that the sentence be mitigated to one (1) year's imprisonment with labour, without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—A true statement of the prisoner's name, when giving

MIDNAPORE.

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Case of
BADEE MY-
TEE.

Prisoner convicted of perjury, in giving his evidence under a false name, to save his master, whose name he assumed, from taking an oath. Sentenced to one year's imprisonment.

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BADEE MY-
TEE.

his evidence as a witness, was unquestionable a point material to the issue of the case. He deposed, that the man regarding whose character inquiry was being made, was a bad character, and, but for the discovery of the false personation, his deposition would have been received as good evidence of the fact. Under the circumstances of the case, and with reference to the recommendation of the sessions judge, I reduce the sentence to one (1) year's imprisonment with labor, without irons.

PRESENT:

J. R. COLVIN, Esq., }
AND } Judges.
J. DUNBAR, Esq., }

GOVERNMENT

versus

SURPUN RUNDY (No. 3), FUKHIRANEE RUNDY (No. 4), AND SUNDUL BEWA (No. 5).

DINAGE-
PORE.

1853.

August 12.Case of
SURPUN
RUNDY and
two others.

Three wo-
men charged
with wilful
murder ac-
quitted, the
evidence being
insufficient as
to the circum-
stances and
cause of death.

CRIME CHARGED.—1st count, wilful murder of Churkettu Nusho, and 2nd count, accomplices in the above crime.

Committing Officer—Mr. E. S. Pearson, magistrate of Dina-

geopore.

Tried before Mr. James Grant, sessions judge of Dina-

geopore, on the 29th June 1853.

Remarks by the sessions judge.—The prisoners were charged with the wilful murder of Churkettu Nusho, on the 31st of August 1852. The prisoner Surpun, No. 3, was released by the magistrate, on the 7th September 1852, and again brought to trial in June 1853, and committed with the other prisoners. The *futwa* of the law officer convicts Surpun, No. 3, and Fukhiranee, No. 4, of culpable homicide and Sundul, No. 5, of being an accomplice. The *futwa* is given evidently in the supposition that the evidence of the witnesses to the fact,—Basurdy, witness No. 1 and his nephews, Sobratoo, witness No. 2 and Joker, witness No. 3,—contained nothing beyond the truth, but in this I cannot concur. That a scuffle took place between the three prisoners on one side and Basurdy, witness, No. 1, Sobratoo, witness No. 2 with the deceased on the other, is clearly proved, and that the death of the deceased was caused by a severe blow received during the scuffle. I believe there is great exaggeration in the concealment of the truth, and downright falsehood in the evidence of all the witnesses, with the exception of Nuthoo, witness No. 10, chowkeedar. Basurdy, witness No. 1, the father of the deceased, was on bad terms with his neighbours generally, and there was evidently a strong inclination on the part of all the witnesses, with the

exception of his relations, to aid the prisoners. A cow or cows belonging to Basurdy, witness No. one's family, eating some grain put out to dry in front of their house by the prisoners, was the origin of the scuffle. The prisoners and their friends endeavour to make out that the cattle belonged to Sobratoo, witness No. 2; that the Basurdy, witness No. 1, and the deceased (carrying a banghy load of *dhan*) who were following, first abused the prisoners and subsequently struck them with bamboos taken from a fence and the enclosure of a well; that the deceased was possibly or probably struck on the head unintentionally by one of his companions and that Joker, witness No. 3, produced a witness to the fact, was not present. Basurdy, witness No. 1, the father of the deceased, and his friends endeavour to make out that the deceased who was coming home with a banghy load of *dhan* and the cattle was attacked by the prisoners; that he, Basurdy, witness No. 1, was at home when his younger son (a child) told him of the squabble, and that Sobratoo, witness No. 2 had also got home with his own cows a short time before, and Sobratoo, witness No. 2, and Joker, witness No. 3, went to the rescue when called to by Basurdy, witness No. 1. From the evidence of the witnesses, generally, it is clear that Sobratoo, witness No. 2's cattle eat the *dhan*, and Basurdy, witness No. 1, states, that the deceased was coming home with nine head of cattle (all that belonged to the family,) so that Sobratoo, witness No. 2's story of having come home before the deceased with his portion of the cattle, is evidently false and apparently intended to conceal what I believe to be the fact, that he and his party were the aggressors. The banghy load of *dhan* which the deceased was carrying was found on the path, some 40 yards from the prisoner's door where the scuffle took place, which makes it very probable that, while the prisoners (Nos. 3 and 4,) were driving off the cattle from the grain, they abused the owners who resented and attacked them in consequence. It appears from the evidence of the civil assistant surgeon that the deceased was severely beaten upon the head, back, and right arm, and that there was an extensive fracture of the skull which must have been caused by some heavy weapon, and Basurdy, witness No. 1, declares, that the prisoners, Surpon, No. 3, and Fukhiranee, No. 4, hit the deceased, the former with a plough-yoke some 3 cubits long and the latter with a heavy *lattee* (produced) about the same length. I have no doubt as to the deceased having been beaten by the prisoners Nos. 3 and 4; but they also had marks of beating, and next day the husband of one of them sent notice to the thannah, that they had been beaten and that a silver necklace had been taken from one of them.

At that time the deceased was not supposed to be in danger,

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SURPUN
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SURPUN
RUNDY and
two others.

the mark of the fatal blow being small outside, and though after his death the countercharge was dropped, I have no doubt that the women had been attacked during the absence of their husbands and consider themselves the aggrieved party, whether there was any truth in the necklace part of the story or not. It is very improbable that the women should have seized the deceased, a healthy young man, 40 yards from their house and dragged him there, leaving his heavy load of *dhan*, while he was within hail of his friends, and I am satisfied that when the beating commenced they were acting in self-defence or irritated by insult added to injury. It is very possible that the deceased may have put down his load and gone towards the women, who were driving off his cattle, and that they may have got him down before his companions came up, and then made use of their weapons seeing rescue at hand. The evidence of Basurdy, witness No. 1, in the foudaree and before me is contradictory. In the former he said he was told the prisoners were abusing the deceased ; here, that they were beating him and his assertion that the prisoner Sundul, No. 5, held the deceased by the testicles, is most improbable, particularly if as Sobratoo, witness No. 2, and Joker, witness No. 3, state the deceased was lying with his face towards the ground. Sobratoo, witness No. 2, before me spoke to the holding by the testicles which he denied, on being told that in the foudaree he had said by the neck and Joker, witness No. 3, said that he went to call the chowkeedar, whereas Basurdy, witness No. 1, did so according to himself and the chowkeedar. Several witnesses for the prisoners state that the said Joker, witness No. 3, was not present and they are supported by the fact of the above contradiction and his name not having been mentioned in the notice sent next day to the thannah, on the part of the prisoners, against Basurdy, witness No. 1. With the exception of the evidence above-mentioned, as to Sundul No. 5, having held the deceased which I do not credit, there is no proof that she took any active part in the squabbles, the other witnesses merely stating that she was present and passive. I would therefore acquit her ; to the other prisoners I would give the full benefit of the suspicious nature of the evidence against them, and the probability that they were injured and insulted before the scuffle commenced. They are both married women with young children and though their husbands are workmen, they appear to be respectable and to have induced the darogahs to report favorably, which in this instance I attribute to its being generally believed, that though the result of the scuffle was unfortunate, they were not much to blame. To send them to jail even for a month would ruin their characters and prospects for life, and injure their children and

husbands ; I therefore recommend that they be sentenced each to pay a fine of twenty-five (25) rupees, to be enforced by distress and sale of the property of the prisoners.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin and J. Dunbar.)—The three principal witnesses Basurdy, Sobratoo and Joker, (of whose presence on the occasion, the sessions judge expresses strong doubts) have varied so considerably in their subsequent statements, from what they deposed to on the first inquiry, in the mofussil, that no reliance can be placed on their evidence. The evidence, most entitled to credit, is that of Hussunoollah and Belathoo Nusho, both because they were appealed to, as cognizant of the facts, by both parties in the mofussil, as shown in the darogah's summary of the evidence, and because their statements have been consistent during every stage of the proceedings. Their evidence, confirmed by the general tenor of that of Nuthoo chowkeedar and others, who deposed to the marks of violence on the persons of the prisoners, shows that there was a scuffle between the parties, in which the men were the aggressors, and that the deceased received the blow on his head, which caused his death, during that scuffle ; but there is no distinct evidence as to how, or by whom, that blow was given. The presumption is, no doubt, that it must have been inflicted by one or other of the women, most probably by Surpun, as she is said to have been the only one who had a stick in her hands ; but the whole tenor of the evidence bears out the conclusion arrived at by the sessions judge, that when the beating commenced they (the women) were acting in self-defence or irritated by insult added to injury. As there is no clearly trustworthy evidence in regard to the precise circumstances and cause of death, we cannot convict the prisoners of culpable homicide ; nor is their proof regarding the quarrel and struggle, which would authorize their conviction even of the minor offence of assault. We cannot find it to be certain that they were acting, at any time, otherwise than in self-defence.

We therefore acquit them and direct their release.

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RUNDY and
two others.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

ASGUR.

BACKER-
GUNGE.
—
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Case of
ASGUR.

Prisoner
convicted of
affray attended
with culpable
homicide and
sentenced to
five years' im-
prisonment,
in appeal the
prisoner urged
mistaken iden-
tity and fur-
ther inquiry
was ordered,
after which the
sentence was
confirmed.

CRIME CHARGED.—1st count, wilful murder of Addoo and Sonaollah Sirdar, and 2nd count, affray attended with the culpable homicide of Addoo and Sonaollah Sirdar.

CRIME ESTABLISHED.—Affray attended with culpable homicide.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 1st March 1853.

Remarks by the sessions judge.—The affray with which the prisoner is charged occurred in 1848. Several persons were tried and convicted, at the sessions for August of that year.

The substance of the sessions judge's report then was, that there had been a mutual fight between Mahomed Kullim and his party, and the dependents of one Luckhee Narain Chatterjee, arising out of a dispute about some land in Bansbaria, the place where the affray happened. The affray took place in presence of the molurrir and a burkundauze of the thannah ; two men on the part of Mahomed Kullim were killed, one upon the spot, and the other was carried off and thrown, it would appear, in a dying state, but alive, into the river, where the dead body of his companion was also thrown. Several persons were convicted and sentenced in the original trial from five to seven years' imprisonment which, with the exception of one person, was confirmed in appeal by the Nizamut Adawlut, *vide* extract from the court's proceedings, under date the 15th November 1848.

The prisoner now at the bar was named from the beginning and has been identified by five witnesses, as having been seen by them in the affray, on the side of Mahomed Kullim whose own brother he is.

His defence is that he was absent, being occupied in his marriage and returned the morning of the affray, only in time to hear of its occurrence. This *alibi* was not established, and in conformity with the verdict of the jury, the prisoner was sentenced to five (5) years' imprisonment, being the same punishment as that awarded to the other prisoners originally tried, who fought on the same side.

Resolution by the Nizamut Adawlut, No. 747, dated 30th June 1853.—(Present: Mr. J. Dunbar).—The Court, having perused the papers above recorded, relating to the case of Asgur, observe that the prisoner was convicted and sentenced to punishment by the sessions judge on the 1st March last, on a charge of affray with culpable homicide; against that sentence he has appealed.

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 Case of
 ASGUR.

It appears from the proceedings, that in the depositions of the witnesses given at the thannah, immediately after the occurrence in the year 1848, a man named Asgur is mentioned as having taken an active part in the affray; orders for his apprehension were accordingly issued, and in December last, Asgur, son of Toraboodeen, was sent in; he pleaded *alibi* and asserted that he was not the Asgur indicated in the depositions above-mentioned. The real offender he said was another Asgur, brother of Mahomed Kullim, son of Mahomed Reza, who had already been convicted and sentenced. Although two witnesses for the prosecution swore that the said Asgur was present in the affray, three declared that he was not the man, and their testimony was strengthened by that of three witnesses for the defence. That Asgur was accordingly acquitted, on the 4th January 1851, and orders were issued for the apprehension of Asgur, brother of Kullim.

Eventually the darogah sent in the Asgur whose appeal is now before the Court. In his answer taken by the magistrate on the 13th January 1853, he called himself the son of Mahomed Reza, denied the charge, and asserted that the Asgur mentioned by the witnesses for the prosecution, was the *dhurm* brother of Kullim, who had lived with the latter.

On the 29th January, five witnesses swore that the prisoner was the man of whom they had spoken in their original depositions. The prisoner subsequently brought forward two witnesses, but their evidence was rejected on the 17th February, and the prisoner was committed to the sessions. On the trial he was recognized by five witnesses for the prosecution. In his defence, he asserted that on the 7th Maugh, the date of occurrence of the affray, he was at Kaloodass Kathee. He examined four witnesses, two swore that he was not present at the affray, and two that on the 7th Maugh he was married to the daughter of Zeeaoollah, jemadar of Kaloodass Kathee. The prisoner in his petition declares that his liberty has been falsely sworn away, because he refused to buy off the witnesses; he further declares that the real Asgur, who has absconded, was a man of very little means, and that his property had been attached and sold, whereas he (the prisoner)

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Asgur.

is the owner of talooks and other property ; he, therefore, prays for further inquiry.

It is evident from what has been said above, that one Asgur was wrongly apprehended, and the Court are not fully satisfied as to the identity of the man now in jail, with the man who was engaged in the affray. The doubt upon this subject, however, may be readily cleared away by further inquiry. The sessions judge is accordingly requested to cause careful local inquiry to be made, with a view to ascertain whether the prisoner now under sentence is, or is not, the individual Asgur, who was concerned in the affray. Some respectable persons also acquainted with the parties and with the circumstances of the case, should be sent in for examination. Their depositions should be taken by the sessions judge in presence of the prisoner, who should be allowed to put such questions to them as he may desire.

Further remarks by the sessions judge.—Two other eye-witnesses have given their evidence, these are a mohurrir and a burkundauze, who for a length of time were stationed at a *faree* close to Bansbarea. Both these persons gave evidence in the first instance and named Asgur. Both saw the fight, both know Asgur and all his relations, and if they are worthy of belief, not a doubt can rest upon the fact that the prisoner Asgur is the very Asgur who was in the fight, together with his brother Kullim, who is now undergoing a sentence of imprisonment for that offence.

It is also well proved, that no other Asgur lived in Bansbarca and there is every reason to presume that the prisoner and his relations, who are men of some means, were instrumental in getting another man of the name of Asgur improperly apprehended, and that they also procured the attachment of a deserted house of a relative of theirs, Panchcowree, as belonging to one Asgur, an up-country man ; that house is now re-occupied by Panchcowree, and it is plain to see that the motive of allowing this house to be attached was to establish the flight of the fictitious Asgur, from his alleged old haunts and so stop further enquiry to the perpetual harassment of the real culprit.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dumbar).—The result of the further enquiry, directed by this Court, regarding the identity of the prisoner, leaves no room to doubt, that he is the Asgur who was engaged in the affray in which Addoo and Sonaollah Sirdar were killed. The sentence of the sessions judge is confirmed.

PRESENT:
SIR R. BARLOW, BART., Judge.
AND
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

BECHA RAI.

CRIME CHARGED.—Wilful murder of Goburdhun Dosad, a thief.

Committing Officer—**Mr. J. F. Lynch**, deputy magistrate of Sewan, zillah Sarun.

Tried before **Mr. C. Garstin**, sessions judge of Sarun, on the 26th May 1853.

Remarks by the sessions judge.—This is the third case of thief-killing, which has been committed to the sessions within this month, and it, like both the others, is referred for the orders of the Nizamut Adawlut, both on account of my dissent with the *futwa* which convicts the prisoner of wilful murder, and because I consider it a case for a more severe punishment than I have power to inflict.

The facts are briefly as follows:—The deceased having entered the house, in which the prisoner was then sleeping, for the purpose of stealing grain, made some noise which awoke him, so thereupon he (prisoner) went outside and waited till the man was again getting out of the hole by which he had entered, when he struck him several blows about the neck with a *kodal* or pick-axe, and killed him on the spot.

The only person, who really seems to know any thing about the case, is a man named Teeka, who, on that night, was acting as chowkeedar, and he states, that hearing a cry of thief, he proceeded to the prisoner's house, where he found the body lying with the head nearly cut off and the prisoner standing by it with the *kodal* in his hand, and heard from him that he had killed the man, when escaping from the house. Other parties then came up, and in the end the prisoner was secured and sent into the thannah. There is much reason to think that the deceased had been tied up before he was killed, as the corpse had the marks of ropes round both the arms, and though there is no satisfactory proof of this, and both Teeka and those who came up afterwards deny that he was bound, I quite agree with the magistrate in the opinion he gives, that Teeka, or others, were probably aiding in the homicide, though there is no evidence to establish the fact.

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Case of

BECHA RAI.
Prisoner
convicted of the
culpable homi-
cide of a thief
and sentenced
to seven years'
imprisonment.

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Case of
BECHA RAI.

The prisoner Becha has from the first adhered to the statement he makes on this trial, that he killed the man as he crept out of the hole. The only plea he makes in extenuation is, that the man was very strong and that he was afraid that he might escape, or that he might be attacked and beaten by his associates, though he admits that he saw no one else. It appears to me, however, that the prisoner made no attempt to secure the man, and that he used much unnecessary and cruel violence on the occasion, and, under these circumstances, I cannot but hold him deserving of severe punishment.

The moulvee convicts the prisoner of wilful murder and, under all the facts of the case, holds him liable to *tazeer*. I consider him guilty of aggravated culpable homicide and, with reference to the precedent given in the case of *Government versus Nundoo and Dhipoo*, 31st August 1839, recommend that he be imprisoned with labor and irons for ten (10) years.

Resolution of the Nizamut Adawlut, No. 680, dated the 17th June 1853.—(Present : Sir R. Barlow, Bart.)—The Court, having perused the papers connected with the trial of Becha Rai, observe that all the witnesses to the *sooruthal* describe marks of bandages on the arms of the deceased. The medical officer *reports in his letter, 14th April 1853*, that he has little doubt the deceased had been bound, *prior to the receipts of the injuries* on the neck and lower jaw. The best evidence to this fact is required, as, if it be legally proved, it is a circumstance of considerable aggravation, whereas the most important witness to the fact has not been examined in either of the courts below on oath, which would alone render his statements legally receivable on the trial. It is consequently defective and must be returned to the sessions judge, who will call for the medical officer and duly examine him. He will take a fresh answer and *futwa* and report the case if he should deem it necessary.

From the sessions judge of Sarun to the Register of the Nizamut Adawlut, No. 144, under date the 29th July 1853.

Having completed the further enquiry, directed in your Court's letter, No. 680, dated 17th ultimo, I have now the honor to re-submit, for the orders of the Nizamut Adawlut, the proceedings held in the case of Becha Rai, charged with the wilful murder of Goburdhun Dosad, a thief.

I beg respectfully to observe, with reference to this case, that I did not consider it necessary to take the evidence of the civil surgeon in it, solely, because at the time the trial came in, Dr. Simpson had been removed to another district, and as the cause of the man's death was clear and evident, and there was other (and in my opinion, ample) evidence to show that the deceased had been bound. I did not consider

it needful to recall the doctor to depose only to the fact of his having observed marks of ligatures upon the arms.

This has, however, now been done and Dr. Simpson states clearly, that the body had marks of bandages on the arms. A fresh answer and "futwa" have also been taken, and as the moulvee again convicts the prisoner on strong suspicion of wilful murder, whereas (as before), I do not consider the crime established to amount to more than culpable homicide, it becomes necessary, solely on account of my dissent with the "futwa," to return the proceedings for the order of the Court, and I accordingly forward them herewith, recommending (under the precedent given in the case of Keidoo and Dojokee and another, sentenced for a nearly similar offence by your Court, on the 17th June) that the prisoner be sentenced to imprisonment with labor and irons for seven (7) years, from the date of the conclusion of his trial at this station, viz., the 26th May last.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.)—This case was returned for further investigation, for the reasons recorded in the Court's minute of the 17th June.

The sessions judge now reports he did not consider it necessary to take the evidence of the civil surgeon, solely because when the trial came on, Dr. Simpson had been removed and as the cause of the man's death was clear and evident and there was other, *and, in the judge's opinion, ample evidence* to show that the deceased had been bound.

The Court observe that in his former letter of reference he stated "there was much reason to think, that the deceased had been tied up before he was killed, as the corpse had the marks of ropes round both the arms, *though there is no satisfactory proof of this*, and Teeka and those who came up afterwards deny that he was bound." It was with the view to clear up the doubt, thus strongly put by the sessions judge, that it was deemed necessary to call for further investigation and to procure the best evidence to a fact of great importance that the record was remanded.

The civil surgeon has accordingly been examined, but there is very material omission in the question which was put to that officer. The point to which the sessions judge's notice was particularly directed, was the circumstances of the allegation made by him, that there was much reason to think that the deceased had been tied up *before* he was killed. The civil surgeon was not asked whether he was of opinion that the arms of the deceased were bound before he was killed, but merely whether the arms of the deceased had been bound.

Had there been satisfactory proof brought forward of the deceased's arms having been bound *before* death, a case of great

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aggravation would have been established, and the Court would feel it their duty to pass a proportionate sentence. As it is, the prisoner must have the benefit of the doubt, as to whether the marks on the arms of the deceased are the result of ill-treatment before or after death. We therefore confirm the sentence proposed by the sessions judge.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND PUTUNEE KUSHBEE

versus

TALOO (No. 21), KHEER (No. 22, APPELLANT), AND HAREE (No. 23, APPELLANT.)

RUNGPORE.

1853.

August 13.
Case of
KHEER and
HAREE.

Two prisoners convicted of dacoity by the sessions judge, acquitted in appeal owing to the insufficiency of the evidence.

CRIME CHARGED.—Dacoity in the house of the prosecutrix and plundered property, value rupees 238½; 2nd count, accomplices in the above dacoity; 3rd count, excepting prisoner No. 22, taking and having in possession property acquired by the above dacoity, knowing it to have been so acquired.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 21st May 1853.

Remarks by the officiating sessions judge.—This was a simple case of dacoity, occurring in the jurisdiction of thannah Patgoan, on the 9th of December 1852. From the evidence of the prosecutrix and witnesses, it appears the dacoits broke into her house late at night and stripped the girl Dheepoo, who clearly recognized prisoners Nos. 21, 22 and 23 who were also sworn to by the prosecutrix and witness No. 16.

The prisoners Nos. 21 and 22 confessed before the darogah, and the property proved by witnesses Nos. 3, 4 and 5, to be that of the prosecutrix, was found in the possession of prisoners Nos. 21 and 23.

The defences set up by the prisoners of ill-usage, &c., utterly failed, and seeing no reason to doubt the evidence, which was clear and satisfactory, I convicted the prisoners Nos. 21, 22 and 23, having tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Imprisonment with labor and irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The parties appealing are two out of three prisoners who were convicted of dacoity by the sessions judge.

He remarks that the witness named Dheepoo, a girl living in the house of the prosecutrix, "clearly recognized" these two

men who were also sworn to by the prosecutrix. He also states, that the prisoner Kheer, No. 22, confessed before the darogah, and that property, identified by the prosecutrix's witnesses, was found in the possession of Haree, No. 23, these are the grounds of conviction. On turning to the mofussil proceedings I find, that Dheepoo never mentioned the names of the prisoners Nos. 22 and 23 ; No. 23, being implicated by the confession of another dacoit, was apprehended by the police, and the prosecutrix named no one in her first statements to the darogah, but seeing the prisoner, No. 22, in the house of one named by the girl Dheepoo, the prosecutrix accused him of being one of the gang who robbed her house, and had him arrested.

The only remaining proof adduced against these prisoners, is the confession of No. 22, before the darogah, and the possession of a pillow and small brass cup, found in the house of No. 23, claimed by him and the prosecutrix, whose right to the articles is supported by their respective witnesses.

The confession of No. 22, was not repeated by him when brought before the magistrate, and the recognitions of the prosecutrix and her witnesses resting on the accusation of the former, and dating only from their examination in the foudarry and sessions, are quite unworthy of credit. This prisoner must be acquitted.

There are also no sufficient grounds for the conviction of the prisoner No. 23 ; his name having been mentioned by another prisoner is no proof in itself ; and of the two articles found in his house, the pillow only seems to be capable of identification. But although I find such articles are entered in the prosecutrix's list of property, the original entry has evidently been altered, and the vernacular expletive does not correspond with terms in use for articles of this description. I therefore acquit this prisoner also for want of satisfactory proof.

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Case of
KHEER and
HAREE.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

TOOKAH NUSHA.

RUNGPORE.

1853.

August 13.

Case of
TOOKAH NU-
SHA.

Prisoner charged with rape, acquitted by the Sudder Court, owing to the insufficiency of the evidence.

CRIME CHARGED.—1st count, rape upon Ganee Aorut, and 2nd count, assaulting the said Ganee Aorut, with intent to commit rape upon her person.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 20th July 1853.

Remarks by the officiating sessions judge.—In conformity to the instructions laid down for the guidance of this court, in your predecessor's letter, No. 728,* of the 1st June 1852, I have the honor to submit the papers in the case of Tookah Nusha.

It appears from the evidence given by Ganee Aorut, that one Sunday she had been to the *haut* at Govindpore, and on her return thence, was followed by the prisoner Tookah Nusha, who after some conversation seized her by the arm, threw her down, and offered her violence; she screamed out but in vain and he committed a rape upon her. That afterwards he ran away, and first Bundoorah and afterwards Alee Sirdar came up to whom she told her story.

Bundoorah, witness No. 2.—States that he and Alee Sirdar had been together to the Govindpore *haut*, and as they were returning he heard the screams of a woman issuing from the jungle and recognized Ganee's voice, who said Tookah was raping her, that he immediately ran ahead of Alee and found Ganee weeping in great distress, and saw Tookah running away; Ganee told him that Tookah had raped her and he observed marks upon the ground, but none on her clothes. Alee then came up and they took Ganee home, who told the

* Extract from a letter of the Register of the Nizamut Adawlut to the officiating sessions judge of Rungpore, No. 728, dated 1st June 1852.

As it has been held that attempts to commit an offence follow the course prescribed for the offences themselves, you should have referred the case of Fukerali Nusha, No. 2, of statement No. 6, for an attempt to commit rape, to the Nizamut Adawlut under Clause 3, Section VI., Regulation XVII. of 1817. Th Court, by Act XIX of 1848, quash your conviction and the sentence of five years' imprisonment passed upon the prisoner, on the 14th of April last, and direct that you refer the trial in the regular course, expunging the case from statement No. 6, and entering it in the register of trials referred, which you are requested to submit.

neighbours what had happened. She is a respectable woman of good character and gave intimation at the thannah.

Alee Sirdar, witness No. 3.—States that he and Bundoorah were returning from the *haut*, when he heard a woman screaming. Bundoorah ran up and he followed and saw Ganee weeping, who had said that Tookah had seized her, but he heard nothing about a rape, nor did he observe marks on the ground nor of any kind on her clothes. He saw Tookah running away.

Adoo Sirdar and Tarukoollah, witnesses Nos. 4 and 5.—Accompanied the darogah to the spot to make a sooruthal.

Witnesses Nos. 6 and 8.—Witnessed the confession of the prisoner Tookah Nusha at the thannah. He then said that he seized Ganee with the intent to commit a rape upon her, but that she screamed and he ran away without completing his purpose. The confession was free and voluntary.

Witnesses Nos. 9, 10 and 11.—Witnessed a similar confession before the joint-magistrate which was unbiased.

Defence.—The prisoner Tookah Nusha pleads *not guilty* before the sessions court, and declares he was compelled by ill-usage to make the confession, but his statement is unsupported by any witness.

The futwa of the law officer.—The law officer Gholam Hossein returns a *futwa* of *guilty* of the 2nd count.

Opinion and recommendation of the sessions judge.—The evidence, of the woman and two principal witnesses, has been throughout the same, and I see no reason to doubt its correctness, but except the woman's own statement there is no proof whatever of the rape having been effected. The prisoner's confessions agree with the evidence and are proved to have been voluntarily made and, therefore, agreeing with the law officer, I beg to recommend a sentence of five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The evidence in this case is by no means satisfactory. The two witnesses, who, on hearing Musst. Ganee cry out, went to the spot, give different accounts of her statement to them ; to the one she said she had been violated by the prisoner ; the other witness deposes that he heard of no such charge. The story is an improbable one. If Musst. Ganee's statement is to be relied upon, it must be believed that the prisoner attempted the offence close to the road, along which the villagers were at the time passing and re-passing *en route* to the *haut*. The prisoner nowhere confessed to the charge. In the mofussil he said he laid hold of Ganee's hands ; before the magistrate that he solicited her favours. I acquit the prisoner, he must be immediately released.

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Case of
TOOKAH NU-
SHA.

PRESENT :

J. R. COLVIN, Esq., Judge.

GOVERNMENT AND SHUMBHOO CHUNDER SREE-MANEY
versus
JEEBUN LUSHKER (No. 1), AND SHAIK SULLEEM
(No. 2)

24-PERGUNNAHS.

CRIME CHARGED.—Highway robbery and plunder of Co.'s rupees 27, from the person of the plaintiff.

1853.

CRIME ESTABLISHED.—Highway robbery.
Committing officer—Mr. E. Jenkins, magistrate of Howrah,

24-Pergunnahs.

August 13.
Case of
JEEBUN
LUSHKER and another.

Two prisoners convicted of highway robbery and sentenced to seven years' imprisonment. Appeal rejected.

Tried before Mr. W. J. H. Money, sessions judge of the 24-Pergunnahs, on the 25th June 1853.

Remarks by the sessions judge.—It appeared from the statement of the prosecutor, that on the 5th Falgoon last, he was proceeding from his shop at Jorehaut to his own village, by moon-light, in company with witness No. 1, Gopaul Sreemaney, a boy about twelve years old, and had rupees 27 wrapped up in a cloth on his person. On arriving at a narrow road between sugar-cane fields, the boy remarked that two persons were coming towards them, and just at that moment, prisoner No. 2, Shaik Sulleem, struck the prosecutor with a *lattee* on his right shoulder and prisoner No. 1, Jeebun Lushker, laid hold of him : and both the prisoners commenced snatching at his cloth : the boy ran away, and his cries attracted the attention of witness No. 2, Koochil burkundauze, who was stationed at a police post close by, and on running to the spot, found the prosecutor engaged in a scuffle with prisoner No. 1, Jeebun Lushker, the other prisoner Shaik Sulleem having previously run off with the prosecutor's cloth, and 6-8 in cash, the rest of the money being found on the ground. From the information given by the prosecutor, prisoner No. 2 was apprehended at his own house, very soon after the occurrence alluded to. The prisoners denied the charge on which they were arraigned. The prosecutor's statement was fully corroborated by witness No. 1, Gopaul Sreemaney, and by witness No. 2, Koochil burkundauze ; the apprehension also of prisoner No. 2, was confirmed by other witnesses and he was seen running in breathless haste from the spot, where the robbery occurred, and both prisoners were proved to have bad characters. Both prisoners cited witnesses to certify to their good character, and prisoner No. 1, also to an *alibi*, but nothing was elicited calculated to shake the evidence for the prosecution. I concurred therefore with the law officer in

convicting the prisoners of highway robbery, on strong violent presumption, and sentenced them to imprisonment.

Sentence passed by the lower court.—Seven (7) years, imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin.)—The facts charged are clearly proved against the prisoners. One (No. 1, Jeebun Lushker) was apprehended on the spot, and his explanations, as to the circumstances under which he went there, before the magistrate and on the trial, are inconsistent, and obviously suspicious. The second prisoner, Shaik Sulleem, was named by the prosecutor, immediately on the burkundauze, witness No. 3, coming up on hearing the noise, as having been concerned in the attack and as having run off. He was seen running away by two of the villagers, and was apprehended at once by the burkundauze in his own house.

The only circumstance, that can raise a doubt as to the truth of the case for the prosecution is, that the prisoners live near the prosecutor, one Sulleem in the same village and close by his house. The robbery is stated to have been committed so, that the noise could be heard from the village. But this circumstance is not sufficient to invalidate the strong and consistent evidence in the case.

One of the prisoners, Sulleem, complains of one of his witnesses not having been examined. But he was only one of his witnesses to general character, of whom six had already given their evidence.

There is no ground for interfering with the conviction and sentence.

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Case of
JEEBUN
LUSHKER and
another.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

DERASUTOOLLAH KAZEE AND GOVERNMENT

versus

JADOO SHAHA.

NUDDEA.

1853.

August 13.
Case of
JADOO SHA-
HA.

Prisoner convicted by the sessions judge of theft attended with wounding, and sentenced to transportation for life, the sentence being referred for the confirmation of the Court. The Court held from the nature of the wound and the character of the weapon, that the murderous intent was not proved and sentenced the prisoner to five years' imprisonment.

CRIME CHARGED.—1st count, theft of two silver chains, property of the prosecutor, Derasutoollah Kazee, value rupees 4; 2nd count, wounding with intent to murder the said prosecutor, Derasutoollah Kazee, and 3rd count, knowingly keeping stolen property in his possession.

Committing Officer—Baboo Issur Chunder Ghosal, deputy magistrate of Santipore.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 14th July 1853.

Remarks by the sessions judge.—The *futwa* of the law officer of this court, declares the prisoner convicted on full legal proof, of the crime of theft attended with wounding, and liable to punishment by *akoobut shudeed*. I concur in the above finding, and as the crime of theft was attended with a wound on the prosecutor's throat, just below the left jaw, which now, when it is quite healed, has left a scar measuring five inches in length and a quarter of inch in breadth, and several others on different parts of the body. I have no doubt that murder was intended and would have ensued, if the prisoner had had a straight knife. That which he used and which the chowkeedar, who seized him (while still in hold of the prosecutor and the eye-witnesses) took out of his hand, was an English clasp knife with a bill end, such as gardeners use, and the point could only enter a small distance. Had it been a common shaped knife the prosecutor would, without doubt, have been killed.

The prisoner is a man of bad character and two witnesses, Nos. 10 and 11, have deposed to his never being employed in gaining a livelihood.

At the thannah and before the deputy magistrate he made no defence, but said before me, that the charge was a false one and got up through revenge, because he had criminal connexion with the prosecutor's sister.

The prisoner having been seized immediately after he had committed the crime, with the stolen property, which was a silver waist-chain, concealed on his person, and with the bloody knife in his hand; no doubt can be entertained of his guilt, or of the intention with which he committed the assault. I have sentenced him, under Clause 4, Section VIII., Regu-

lation XVII. of 1817, to imprisonment for life in transportation and refer the trial under Section IV., Regulation VIII. of 1808.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The above facts are clearly proved, the prisoner wounded the prosecutor in trying to get away from him and escape, but I see no evidence of his intent to murder. The wounds were superficial and not of a dangerous nature, neither was the weapon a deadly one. I convict the prisoner of theft and wounding, and sentence him to five (5) years' imprisonment with labor and irons.

PRESENT:
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND GYNAH BEWAH
versus
AJOOAH TURUFDAR.

CRIME CHARGED.—Rape upon the person of Mom Chokry, daughter of the prosecutrix.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 28th July 1853.

Remarks by the officiating sessions judge.—It is unnecessary for me to take up the time of the Court with a lengthened report, the commission of the act is clearly established by the evidence of the mother, and witnesses Nos. 1 and 2, and the deposition of Mr. Taylor, No. 6.

The prisoner, before the darogah, joint-magistrate and the sessions court, adheres to the same statement, that he had connection with the child (who is so infantine that her evidence could not be taken) at her own request, and brings two witnesses forward to prove he used to play with her, and there was some talk of a marriage between them, but both of them state that they know nothing about the matter. The mother proves the girl had not arrived at puberty, and the doctor's opinion goes far to support her; the child's character is proved to be respectable, and she seems to have done every thing in her power to avert the violence, part of her bracelets being found broken on the ground, and her loud screams having brought the witnesses to the spot.

The law officer convicts, and I agree, and as the crime of rape is prevalent in this district, no less than three cases having been tried by me during the present quarterly sessions,

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Case of
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August 13.
Case of
AJOOAH TU-
RUFDAR.

Prisoner convicted of rape on a child of ten year's of age. The prisoner admitted the fact, but pleaded the child's consent. The judge, owing to the prevalence of the crime in the district, recommended a sentence of seven year's imprisonment. The Court, setting aside the prisoner's plea which was also rebutted by the evidence, sentenced him to seven years' imprisonment.

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Case of
AJOOAH TU-
RUF DAR.

I recommend a sentence of seven (7) years' imprisonment with labour and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—This is a very clear case ; the prisoner pleads in his defence that the child consented, but the consent of a child of 10 years of age cannot be presumed, and in this case there is evidence to rebut it, as the persons who saw the prisoner in the act, were attracted to the spot by the cries of the girl. I convict the prisoner of the crime charged and sentence him, as recommended by the sessions judge, to seven (7) years' imprisonment with labor and irons.

PRESENT :

SIR R. BARLOW, BART., }
AND } Judges.
J. R. COLVIN, Esq., }

GOVERNMENT

versus

ARAMDEE MUNDUL.

RUNGPORE.

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Case of
ARAMDEE
MUNDUL.

Prisoner convicted of rape or a child of nine or ten years' old and, with reference to the prevalence of the crime in the district, sentenced, according to the sessions judge's recommendation, to seven years' imprisonment.

CRIME CHARGED.—Committing rape upon Mohulbec Chookree.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 23rd July 1853.

Remarks by the officiating sessions judge.—This is a case of rape committed on the 3rd of April, within the jurisdiction of thannah Adumdiggee ; the darogah investigated into the matter and reported, that there was not sufficient proof against the prisoner. The joint-magistrate, not being satisfied with the report, deputed the deputy magistrate to the spot, and the result was the committal. It appears from the deposition of the child, a girl of about ten years old, that on the day of the occurrence, she took her little brother to play in the verandah of the house where the prisoner was sleeping but in ignorance of his being there, when the prisoner suddenly came out, took her to his bed, covering her mouth with cloth to prevent her screaming and raped her. Immediately upon her release her screams brought her mother and the neighbours, who found her leaving the house bleeding, naked, and crying ; the darogah on his arrival, 4th April, directed two women to examine her person, who reported the parts swelled and excoriated ; and the apothecary in charge of Bograh swears she is not a virgin ; she is proved to be a respectable girl, and her mother and

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she herself, swear she has not had connection with any person before.

Peeon Aorut, witness No. 1, mother of Mohulbee.—States that her daughter had been out some time and she remaining at home, when she heard Mohulbee screaming and rushing out ; asked witness No. 3 (now dead) where the girl was, he replied in Aramdee's house and thence she saw her coming naked and crying and bleeding ; she asked her why she was naked and crying, and she told her the prisoner had raped her. Her cloth was afterwards found near the prisoner's house bloody ; she took the child to witness No. 3's house and told the neighbours what had occurred.

Banoo Bewa, witness No. 2.—Heard the screaming and went to the spot, where she saw the child in the state described by witness No. 1, and heard her relate what had occurred.

Beharee, chowkeedar, witness No. 4.—When he came home in the evening, was told what had occurred and shown the bloody cloth.

Witnesses, Nos. 5, 6, and 7.—The same as No. 4, and attended the sooruthal.

Witness No. 8.—Merely sooruthal witness.

Witnesses Nos. 9 and 10.—The two women who by the darogah's order examined the girl. They state that the parts were swelled and excoriated.

Mr. J. Taylor, No. 11.—States that he examined the person of Mohulbee, and that she is not a virgin, but there were no marks of violence, sufficient time having elapsed for them to disappear. (The occurrence, April 3rd ; medical examination, April 25th.)

The prisoner pleads *not guilty* and says in his defence, that there is old quarrel between him and Peeon, the girl's mother, and that at the time the occurrence is said to have taken place he was reading at home. He produced one witness, his own uncle, who resided with him ; he says that he and the prisoner, on the day spoken of, were both in the house when he heard the girl crying and, asking what it was, heard that Aramdee had put his finger up her person. He knows there is an old quarrel.

Futwa of the law officer.—The law officer acquits on the ground of no violence being proved.

Opinion and recommendation of the sessions judge.—I differ. The child swears the prisoner prevented her screaming by putting a cloth to her mouth, and that directly she could do so, she raised the alarm, and I do not see how the point can be more fully established, as there was no one present to witness the actual amount of violence used. The prisoner

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ARAMDEE
MUNDUL.

does not even plead *guilt* to connection with her own consent, and considering all the facts established, I would recommend a sentence of conviction and award seven (7) years' imprisonment with labor and irons, as I see nothing in the prisoner's favor and rape is a prevalent crime in this district, no less than three cases being upon the calendar for trial at this sessions.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. R. Colvin.)—The prisoner is fully convicted of the offence with which he stands charged. The child's own statements on the spot to the women, who went there on hearing her cries, as well as her state when first seen by them, and the depositions of the other witnesses, Jymonee and Bhowanee Harreanee, clearly establish the prisoner's guilt. The child, Mohulbee, between 9 and 10 years of age, stated before the magistrate that she did not understand the obligations of an oath. In the sessions court, upon being questioned on that point, she was duly sworn, and by her deposition substantiated all that had been said by her mother and the witnesses.

We convict the prisoner of rape, and with reference to the prevalence of the crime in the Rungpore district, as stated by the sessions judge, and the tender age of the child, confirm the sentence of seven (7) years' imprisonment with irons and labor, proposed to be passed by the sessions judge upon the prisoner.

PRESENT :

J. DUNBAR, Esq., Judge.

MUSST. BEEBUN BEEBEE AND GOVERNMENT

versus

SHEIK PALON.

CRIME CHARGED.—1st count, wilful murder of Mallee Akoond, and 2nd count, being an accomplice in the above crime.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 18th June 1853.

Remarks by the officiating sessions judge.—From the evidence of the eye-witnesses and those examined, as to the circumstances of the case, it appears that the father of the prisoner, who was the *mollah* (priest) of the village, was dismissed and the deceased appointed in his room, and this created an ill-

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 SINGH.

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 Case of
**SHEIK PA-
 LON.**

Prisoner
convicted of
culpable ho-
micide and
sentenced to
seven years'
imprisonment.

feeling in the mind of the prisoner, who believed that deceased was the cause of his father's discharge from his functions. The evidence of witness No. 1, (the only eye-witness in the case) is to the effect, that on the evening of the 7th April last, he was going to the deceased's house for money, which the latter had promised to lend him, when he met the prisoner on the way who told him he was going to visit his cousin (prisoner No. 7 of the acquittal statement); that he (witness) went to the deceased's shortly after dark, and together with him was going to one Sheik Ghazee, and as soon as they arrived at *Moorgado-hoe's khall*, both the prisoners (Nos. 6 and 7) seized the deceased, bound him with a cloth round his neck, knocked him down, severely assaulted him and dragged him towards his (deceased's) house. Next morning before day-break, the prosecutrix finding her husband near the house lying in an exhausted state, in a path-way, under a clump of bamboos, she began to call out, which brought her neighbours, witnesses Nos. 16 and 17, to the place and who assisted her in taking him to the house, and he at that moment told them, as also to witnesses Nos. 18 and 19, who likewise immediately went there, that he was severely assaulted by the prisoners (Nos. 6 and 7) near a *khall*, where he was inveigled by witness No. 1. The prisoner's step-mother, witness No. 14, also deposed in this court that her son, the prisoner, acknowledged to her of having assaulted the deceased and she and witness No. 15, (the prisoner's wife) both declare the existence of ill-feeling, regarding the office of *mollah*, to which deceased was appointed in supersession of the prisoners' father. The deceased died the next day from the ill-treatment received and his corpse, having been sent to the station, was examined by the civil surgeon who deposed in this court, that in his opinion death appeared to have been caused by severe injuries of the chest, as the breast bone and four ribs on the left, and six on the right, were fractured. The lungs as also the surface of the chest were bruised; that these injuries were the effect of severe blows of some heavy instrument, or produced by a person jumping on the chest, when deceased was lying down, and were so severe that he might have died immediately after receiving them. The prisoner at the thannah and before the assistant magistrate in charge of the sub-division of Jumalpore, admitted having assaulted the deceased, but not severely, saying that at the instigation of Noha talookdar, the *kurumcharee* of an adjoining village, whom the deceased was endeavouring to get dismissed from service, he and witness No. 1, and another person named Gheechoo, assaulted him, he (the prisoner) giving him a blow or two, witness No. 1, having previously inveigled the deceased to the spot where the crime took place; they then left the deceased who walked home. In this court he varied his

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SHEIKH PA-
LON.

statement, saying, that though he was asked by witness, No. 1, and Gheechoo, he declined to assault the deceased until Noha talookdar, who was concealing himself near the *khall*, came up and struck him, when through fear he gave the deceased a slight blow on the back, and witness, No. 1, and Gheechoo were the parties who took the most prominent part in the crime. The prisoner accounted for the contradiction between his mofussil and foudaree confessions and his statement before me, by pleading that the former was extorted by the police and he was tutored by the burkundauze, who brought him to the station to repeat it before the assistant magistrate. But the witnesses not being able to support the defence, and it being fully proved both by the prisoner's admission and the evidence of the witnesses for the prosecution, that the deceased was severely assaulted by the prisoner, which caused his death, I concurred in the *futwa* of the law officer, which convicts the prisoner of culpable homicide and declares him entitled to the punishment of *deeyut*.

Sentence passed by the lower court.—Imprisonment with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner, in his petition of appeal, does not deny having used violence to the deceased ; but he is dissatisfied, because he alone has been punished although, according to his statement, others were engaged with him in the assault. This circumstance does not affect his individual guilt, which is fully established by the evidence of the witnesses and on his own confessions. The sentence is confirmed.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

DINOO GHOSE AND GOVERNMENT
versus

LALUN MUNDUL (No. 1), KENAI SHEIKH (No. 2),
JADOO GHOSE, (No. 3), GOPAL NAIK (No. 4),
BAHADOOR NAIK (No. 5), AND CHOYAN SHEIK
(No. 7).

CRIME CHARGED.—1st count, wilful murder of Sonatun Ghose, father of the prosecutor (Dinoo Ghose,) and 2nd count, accomplices in the said charge and severely wounding the said Sonatun Ghose, whereby he died on the following day.

CRIME ESTABLISHED.—Culpable homicide of Sonatun Ghose.
Committing Officer—Mr. C. F. Montresor, magistrate of Nuddeah.

Tried before Mr. J. C. Brown, sessions judge of Nuddeah, on the 24th March 1853.

Remarks by the sessions judge.—The charge of wilful murder was not proved against any of the prisoners. The man who was deprived of life by the prisoners, was employed to guard grain belonging to the villagers of Bahadoorpoor where the prisoners live, which was distrained for rent and, although it is not proved that any of the grain belonged to them, it appears they made it a common cause of enmity against the deceased. Two of the eye-witnesses, Jadoo and Greedhur, were in company with the deceased when ten or twelve men, whom the witnesses have named, came suddenly on them at midnight; Jadoo was seized to prevent his interfering, Greedhur escaped to a little distance and observed what was going on. The deceased, who was an old man about 60, was so severely beaten that both bones of his right fore-arm were fractured and he received several blows, with *lattees*, on his sides and legs. He was sent into hospital early next morning and died during the day. The civil surgeon has deposed that he died from the effects of the beating. His statement was not as full as it might have been, owing to the corpse having been removed, by some mistake, prior to a *post-mortem* examination. The prisoners all plead, *not guilty*, and to prove an *alibi* each summoned several witnesses, but on their cross-examination every *alibi* was evidently false. The homicide was one of a cowardly, cruel and highly culpable nature, for the deceased was only in charge of the distrained crops in execution of his duty, he was aged and helpless, and the prisoners, all stout and middle aged men, were armed with thick *lattees*, which they used without hesitation.

NUDDEAH.

1853.

August 15.

Case of
LALUN MUN-
DUL and
others.

Six prisoners,
convicted of
the culpable
homicide of an
old man, who
had been ap-
pointed to
watch some
grain distrain-
ed for rent, sen-
tenced by the
sessions judge
to seven years'
imprisonment.
Appeal reject-
ed.

1853.

August 15.

Case of
LALUN MUN-
DUL and
others.

Another prisoner was committed with them, but the evidence against him was incomplete and the *futwa* of the law officer declared him entitled to his release. I concurred in his acquittal or should have acted upon Section V., Regulation XVII. of 1817.

Sentence passed by the lower court.—Seven (7) years' imprisonment each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoners were all recognized and named by the deceased, before the police and before the magistrate, just before his death. The eye-witnesses, who were in watch over the attached crops with deceased, as well as two others who were close by and came out on the cries of the witness Greedhur, also recognized the prisoners by the light of the moon which was nearly full, and they were well acquainted with them previously, being residents of the same village. The prisoners plead *alibi* in their defence. Neither the sessions judge, nor the law officer credit the evidence in support of it. I see no reason to interfere with the sessions judge's sentence.

PRESENT:

J. R. COLVIN, Esq., Judge.

KALLEENATH SURMA CHUCKERBUTTY AND
GOVERNMENT

versus

MOOLOOK CHAUND CHUNG (No. 2), AND SHEIKH
NEEZAM (No. 3).

MYMEN-
SINGH.

1853.

August 15.
Case of
MOOLOOK
CHAUND
CHUNG and
another.

Two prisoners convicted on their own confessions, of burglary and theft and receiving stolen property; sentenced to four years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor and theft of cash and property, valued at rupees 529-3 annas, and 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—Burglary and theft and knowingly receiving property obtained thereby.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensingh.

Tried before Mr. W. Trotter, officiating sessions judge of Mymensingh, on the 8th June 1853.

Remarks by the officiating sessions judge.—Prosecutor states that his house was burglariously entered, a large chest opened and cash and property stolen therefrom; that he reported the affair to the police, but finding the darogah very dilatory in his enquiries, he came to the station to complain against him to the magistrate, when he heard that the thieves, whom he suspected, were detected by the darogah and part of his property recovered from them. The prisoner No. 2, on his apprehension by

the police, confessed that he and prisoner No. 3, and five other persons had committed the theft, and gave up the property which fell to his share. This confession he repeated before the magistrate. Prisoner No. 3, in the thannah and before the magistrate, as also in this court, denied committing theft himself, but stated that early in the morning, seeing four persons (including prisoner No. 2,) carrying a load of property which he suspected was stolen, he charged them, when they gave him part of the property as an inducement to keep the matter a secret, which property he had hid and afterwards gave up to the police. No. 2, however, in this court denied the charge, urging that the property he gave up was his own, that his confession was extorted by the police, and that from hunger and ill-treatment, he was compelled to confess before the magistrate; but he does not know what he repeated there. The witnesses named by the prisoners, however, could not support the pleas set up by them in their defence. I therefore concurred in the *futwa* of the law officer, which convicted both the prisoners of the crime charged, as their confessions have been verified in this court by the subscribing witnesses, and the pleas set up by them were not substantiated, while the property recovered from them has been proved to belong to the prosecutor.

Sentence passed by the lower court.—Imprisonment for the period of four (4) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—Both of the prisoners confessed and gave up part of the stolen property. The confessions have been verified: as there were no witnesses to the fact, the conviction must rest upon these confessions. That of prisoner No. 2, is to burglary and theft, while that of prisoner No. 3, as shown in the sessions judge's own statement, is only to the receipt of stolen property, knowing it to be such. I accordingly convict the prisoner No. 2, on the 1st count, and prisoner No. 3, on the 2nd count, charged in the calendar. The sentence calls for no interference and is confirmed.

1853.

August 15.
Case of
MOOLOK
CHAUND
CHUNG and
another.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

TARUN CHUNDUL MANJEE.

HOOGHLY.

1853.

August 15.

Case of
TARUN
CHUNDUL
MANJEE.Prisoner
convicted of
having belong-
ed to a gang
of dacoits and
sentenced to
transportation
for life.**CRIME CHARGED.**—Having belonged to a gang of dacoits.

Committing Officer—Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 14th May 1853.

Remarks by the officiating sessions judge.—The prisoner is charged with having belonged to a gang of dacoits. He pleads *not guilty*. Before the commissioner he confessed; but here he states the confession was forced from him.

The confession, on which he was committed, was taken on the 30th June and is duly attested, and this and the evidence of the approver, who deposes to having been engaged with him in five or six dacoities on the river, the details of which he gives, I conceive to establish the charge preferred.

The prisoner being a notorious dacoit, as appears from the records, I recommend that he be transported for life beyond seas, with imprisonment and labor.

Resolution by the Nizamut Adawlut, No 637, of 4th June 1853.—(Present: Mr. J. Dunbar.)—The Court, having perused the proceedings held on the trial of Tarun Chundul Manjee, wish to know, *first*, whether the prisoner was named in the original confession of the approver, and for this purpose they wish to see those confessions.—*Secondly*, whether there is any confirmatory evidence of the occurrence of all or any of the eight dacoities, confessed by the prisoner. The mohafiz of the criminal court will probably be able to certify this latter point. The Court direct that the papers be returned, with instructions to the sessions judge to re-submit them, with the information called for, as early as convenient.

With reference to the above resolution, the following report was submitted by the sessions judge:—Referring to the orders of the court, No. 637, of the 4th ultimo, in the case noted

in the margin, I have the honor herewith
Tarun Chundul to re-submit the papers of the case, with
Manjee. copies of letters from the commissioner for
the suppression of dacoity, Nos. 195* and 223,* of the 29th
ultimo and 20th instant, together with roobakarees from the
magistrates of Burdwan and Jessore.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence is sufficient to substantiate the charge. The approver denounced the prisoner in his original confession, and said that he had been engaged with him in six dacoities. The prisoner himself, in his confession before the commissioner for the suppression of dacoity, which is duly verified, acknowledges to having been concerned in eight dacoities, six of which are those mentioned by the approver. Notice of only one of these is to be traced in the records, but this is accounted for by the fact, that they were all river dacoities, of which the police rarely get information, unless they are of an aggravated character. I sentence the prisoner to imprisonment for life in transportation beyond sea.

1853.

August 15.
Case of
TARUN
CHUNDUL,
MANJEE.

PRESENT :
J. DUNBAR, Esq., *Judge.*

GOVERNMENT
versus
SURROOP DULLOOEE.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 21st July 1853.

Remarks by the officiating sessions judge.—The prisoner pleads *guilty*, and has been convicted on his own confession, to the charge contained in the calendar.

The case has been taken up and reported under the orders of the Sudder Court, No. 403, of the 20th April 1853.

Resolution by the Nizamut Adawlut, No. 558, dated 28th May 1853.—(Present : Mr. J. Dunbar.)—The Court, having perused the papers above recorded, connected with the case of Surroop Dullooee, observe that the proceedings have not been rendered sufficiently complete. It is necessary to guard against the possibility of a confession having been obtained, under any false hope, of pardon or employment as approver, held out by dacoits already in the list of approvers. The prisoner has pleaded *guilty* and made a general confession ; and a detailed confession to twenty-one dacoities is named in the calendar, as part of the evidence against him. That confession, however, is not with the record, nor is there any report from the serishtadar, mohafiz or other officer, showing that any of the dacoities confessed to, had actually taken place. It is further to be noticed that the prisoner makes no admission of personal acquaintance with the approver ; he does not even

HOOGHLY.

1853.

August 15.
Case of
SUROOP DUL-
LOOEE.

Prisoner
convicted of
having belong-
ed to a gang of
dacoits and
sentenced to
transportation
for life.

1853.

August 15.
Case of
SURROOP DUL-
LOOEE.

mention his name. Conviction and punishment should be made to rest upon proof, as full and convincing as can be procured. The Court direct that the proceedings be returned to the officiating sessions judge, with instructions to complete the record in the manner above indicated, and to re-submit it without delay.

With reference to the foregoing resolution, the following report, was submitted by the sessions judge, No. 14, dated 11th July 1853 :—Referring to the orders of the Court, No. 558, of the 28th May last, in the case noted on the margin, I have the honor herewith to re-submit the papers of the Surroop Dul-looee. case, with the reports and confessions required, to show that the dacoities confessed to, had been committed; and with further interrogatories from the prisoner, of the description indicated by the Court.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner pleads *guilty* on the trial, and before the commissioner for the suppression of dacoity; he made a detailed confession to twenty dacoities, the occurrence of many of which has been certified from the records; he also admits having done business with the approver, in whose original confession the prisoner's name is mentioned, in connection with some of the dacoities confessed to by him, the details as given by both, corresponding in all material points. The prisoner is sentenced to imprisonment for life in transportation beyond sea.

PRESENT:

SIR R. BARLOW, BART.,
 AND
 J. R. COLVIN, Esq., } *Judges.*

GOVERNMENT AND BUREEZAH NUSHA

versus

HUSHNAH NUSHA (No. 19), LOOTEEAII NUSHA (No. 20), MOLLADEE NUSHA (No. 21), NABO NUSHA (No. 22), AND OOBURROO NUSHA (No. 23).

CRIME CHARGED.—1st count, theft attended with wounding; 2nd count, being accomplices, aiding and abetting in the commission of the said crime, and 3rd count, No. 19, possessing property acquired by the said theft knowing it to have been so obtained.

Committing Officer—Mr. R. W. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 25th July 1853.

Remarks by the officiating sessions judge.—It is clearly shown by the depositions of Bureezah, the prosecutor, and the witnesses Nos. 1, 2 and 3 that while watching their *pawn* gardens upon the night of the 20th of May, Areef in his rounds discovered five thieves coming out of the garden and raised the alarm; it was a fine moonlight night and he clearly recognized all the prisoners, two of whom, Nos. 22 and 23, ran away and the other three commenced beating him, when the witnesses Nos. 2 and 3 and prosecutor came up and recognized the three, Nos. 19, 20 and 21, and saw two men whom they could not recognize running away. Areef was severely cut about the head and left senseless; but from the first he said he recognized all five.

The wounding rendered it necessary for the joint-magistrate to commit the case.

Defence of the prisoners.—The prisoners all plead *not guilty* and attempt *alibis*, but their defence is not substantiated by the evidence, and that for the prosecution is most clear and satisfactory.

Futwa of the law officer—opinion and recommendation of the sessions judge.—The point, which the law officer raises is, that Areef, being a part owner of the garden and the man wounded, should have been prosecutor not a witness, and that without his evidence a conviction cannot be held against Nos. 22 and 23: if however the point is over-ruled by your Court, he holds with me prisoner No. 19, *guilty* of the 1st count. Nos. 20 and 21 *guilty* of the 2nd count.

RUNGPORE.

1853.

August 15.

Case of
 HUSHNAH
 NUSHA and
 others.

Three prisoners convicted
 of theft with
 wounding and
 two acquitted.
 In a case of
 theft with trill-
 ing injury a
 commitment is
 not necessary.
 The owner of
 the stolen pro-
 perty may be
 made witness
 instead of a
 plaintiff, and
 his evidence
 alone may be
 sufficient.

1853.

August 15.

Case of
HUSHNAH
NASHA and
others.

Nos. 22 and 23 guilty of the 2nd count as far as the stealing goes, but not of the wounding, and I would suggest that No. 19 should be sentenced for eighteen (18) months, with labor and irons, Nos. 20 and 21 for fifteen (15) months each and Nos. 22 and 23 for one (1) year each.

If your Court take the law officer's view of the objection raised, he finds prisoner No. 19, guilty of the 1st count, Nos. 20 and 21, guilty of the 2nd count and acquits Nos. 22 and 23.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart. and Mr. J. R. Colvin).—The medical officer reports *trifling injury* to have been sustained by Areef ; so that the sessions judge's remarks, in paragraph 3 of his letter, are inapplicable, and the commitment need not *necessarily* have been made. It is only under the circumstances set forth in Section III., Clause 2, Regulation XII. of 1818, that it is incumbent on a magistrate to commit in a case of theft and wounding.

The prisoner No. 19, before the magistrate, pleaded enmity with prosecutor ; in the sessions *alibi* at Bagarilee ; but this defence failed.

Prisoner No. 20, varied his defence from enmity with prosecutor before the magistrate to an admission, that hearing a noise, he ran to the spot. He also pleaded good character, but his witnesses did not give any satisfactory evidence, such as would set aside that for the prosecution, or in any degree invalidate it.

No. 21, pleaded throughout *alibi* at Hajret bheel. His witnesses have sworn that he was fishing there on the particular date, but are unable to remember other dates.

We see no reason to discredit the evidence of the eye-witnesses, who, as well as the prosecutor, distinctly recognized the prisoners, Nos. 19, 20 and 21 in the act of beating Areef by moonlight, and knew them previously, being neighbours in the same village. We sentence them, respectively, as recommended by the sessions judge.

The law officer in the zillah court, differing from the sessions judge, would acquit prisoners, Nos. 22 and 23, on the ground that Areef is the only person, who implicates them, and he being the real plaintiff, ought not to have been made a witness. There is no force in the objection to his having been made a witness, in a prosecution of this nature, nor is his evidence insufficient by law, from the circumstance that he is the *only* witness against the prisoners. He deposed to having seen these two prisoners running away, but he may have mistaken their persons. The witnesses cited by the prisoners, support their defence

that they were at Ramdeh on the night in question. We acquit them for want of proof.

We observe that under Clause 6, Section V., Regulation IX. of 1831, the sessions judge might, in concurrence with the law officer, have passed sentence on the prisoners, Nos. 19, 20 and 21, suspending execution thereof till the final sentence should have been passed by this Court on the trial, as regards Nos. 22. and 23.

1853.

August 15.
Case of
HUSHNAH
NASHA and
others.

PRESENT:

H. T. BAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

RAMCHUNDER MUNDUL ALIAS CHUNDER MUN-DUL.

CRIME CHARGED.—Perjury, in having on the 2nd July 1851, deposed under a solemn declaration taken instead of an oath, before Mr. C. W. Mackillop, an assistant, exercising powers of a joint-magistrate in the 24-Pergunnahs, in a case of rape, in which Anundo Bewa was the plaintiff, that his name was Bhageeruth Haldar and feigning himself to be that person had his deposition taken, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

24-PERGUN-NAHHS.

1853.

August 15.
Case of
RAMCHUN-DER MUN-DUL alias
CHUNDER MUNDUL.

Prisoner convicted of perjury regarding his name, having feigned himself to be another person, sentenced to three years' imprisonment. Appeal rejected.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. G. A. Paxton, assistant, exercising the powers of a joint-magistrate of the 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 7th June 1853. .

Remarks by the sessions judge.—It appeared that in a case of rape, in which witness No. 1 was the prosecutrix in the year 1851, the burkundauze, who was escorting the parties from the thannah, colluded with the defendant and others and induced the original witnesses to return home, informing them that the case would be compromised : subsequently the prisoner gave his deposition, and unfavourably, under the assumed name of Bhageeruth, one of the original witnesses of the prosecutrix, and was only lately apprehended : another person who also gave his deposition in the case under an assumed name confessed his guilt and was punished at the time. It is proved that the prisoner is the person who gave his deposition under the false name of Bhageeruth ; the mohurrir who wrote the deposition attested it, though he could not remember the

1853.

August 15.

Case of
RAMCHUN-
DER MUN-
DUL alias
CHUNDER
MUNDUL.

prisoner. It was proved that the original witnesses were told by the burkundauze to return home, under the idea that the case would be compromised, and that the prisoner was never sent in as a witness or required as such. The prisoner pleaded an *alibi* and that Anundo Bewa has conspired against him, and cited witnesses to prove his absence, which was not satisfactory, the distance moreover from his own village not being more than eleven or twelve coss. I concurred with the law officer in convicting the prisoner of perjury, on violent presumption, and sentenced him to imprisonment.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The women Anund and Chand depose that the prisoner is the person who impersonated Bhageeruth, on the 2nd of July 1851, and gave his evidence feigning himself to be that person; though the fraud was not at the time discovered, these women disclosed it to the magistrate on the following day, and the prisoner has kept out of the way since. The proof against the prisoner is direct. I do not understand why the sessions judge convicts him on violent presumption; but I see no reason to interfere with the sentence passed, and reject this appeal.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

AND

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

BACKER-
GUNGE.

1853.

August 15.
Case of
NUSSIMOOD-
DIN alias
SUMMON
MEERAH and
others.

Seven pris-
oners convicted
of affray with
wounding and
sentenced to
seven years'
imprisonment.

NUSSIMOODDIN ALIAS SUMMON MEERAH (No. 12), BABUROLLAH (No. 13), NUMOODDIN (No. 14), KULLUNDER KHAN (No. 16), NUSSOO (No. 17), TARRAKKHAN (No. 18), MAHOMED ALLI (No. 19), AJUL KHAN (No. 20), CHERAG ALLI (No. 21), SUBUROODDIN (No. 22), KETABOOODDIN (No. 23), SUFDAR (No. 24), AND BHUGGO BHOOIMALEE (No. 25.)

CRIME CHARGED.—Nos. 12 to 24, 1st count, wilful murder of Mofezooden *alias* Mohuree, and 2nd count, affray attended with the culpable homicide of Mofezooddeen *alias* Mohuree and the wounding of Suburooddin, Ketabooddin, Sufdar,

Jubber, Howlader, Esuff and Shundoollah, No. 25, being an accessory before the fact to the above crime.

1853.

August 15.

Case of
NUSSIMOOD-
DIN alias
SUMMON
MEERAH and
others.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 2nd June 1853.

Remarks by the sessions judge.—From what was elicited at the trial, the matter in dispute between the parties, who figure in this affray, would seem to be, that some time ago one Jubber Khan, the brother of prisoner No. 14, Bambuollah, bought a share in a talook called after Roopjan Bebec. The prisoner Kullunder Khan was farmer of the other 14 annas and kept Jubber out of possession.

Jubber has lately got a stronger man than himself to espouse his cause; and Kullunder, not to be outdone, has followed his example. Both parties, thus strengthened, seem to have made previous preparations to bring their dispute to the issue of a fight. Accordingly the day before the affray Jubber went with his men and stuck up bamboos, the emblems of possession, on the disputed ground. The next day Kullunder, with a considerable force, went to take them up and a fight ensued, in which a servant of Jubber Khan was killed and carried off the field by Kullunder's party, since which his body has not been found nor is there evidence to show what became of it. There is no doubt however that the man was killed in the fight, whatever may have become of the body.

This outline of the general facts of the case are not denied by either party. The proof of them is also abundant and the only point on which any discrimination is called for, is whether the proof adduced is sufficient to bring the charge home to all the prisoners at the bar.

Every prisoner at the sessions set up the same defence, viz., an *alibi*. The evidence on this head I hesitate not to reject as unworthy of any regard.

The law officer convicts all the prisoners and in this finding I concur fully, except in the case of the prisoner No. 12.

As an index of the evidence I subjoin a figured statement, showing at a view the name or names of the prisoners as deposed to by each witness on each occasion of his examination.

1853.

August 15.
Case of
NUSSIMOOD-
DIN *alias*
SUMMON
MEERAH and
other.

If the witnesses are to be believed at all, the evidence is complete against the prisoners Nos. 13, 14, 17, 18, 19, 20, 21, 22, 23 and 24.

In regard to the prisoner No. 12, though I have not in my own mind any doubt that he was present, either in the fight or in the village at the time, the evidence against him is not consistent. In the case of ordinary persons, the same witness may without exciting surprise, forget to name, in a subsequent examination, some one as in the fight, whose presence he deposed to on some prior occasion; but the prisoner No. 12 was a principal, and any witness who really saw him in the fight, or near it at the time is without excuse, if he fails to name him on every occasion of his examination. Tried by this test, the evidence is defective and the prisoner No. 12 is, in my opinion, entitled to his acquittal.

As regards Kullunder Khan, there is unfortunately the same flaw, while there is even less doubt of his guilt. There is, however, this difference in the case of this prisoner and that of No. 12, that he is the party in whose cause the fight took place, he was named as a principal, present in the fight, in the very first intimation of the affair given to the police, he gave a bribe to get off, and his defence completely broke down by the contradictions apparent in the depositions of his witnesses, through whom he attempted to establish an *alibi*. In his case there can be no doubt of guilt, and I do not think it would be a clear defeat of justice, if, from a discrepancy in the evidence, which the weight of his own purse has no doubt occasioned, he should be acquitted.

I have observed that he gave a bribe to get off; though the evidence of this is defective, I still maintain that there is ground to conclude that he did give the bribe. On the 7th March, the darogah appeared in person to carry on the enquiry. Like a good officer, he immediately took the most effectual measures to apprehend the *really* guilty; for this purpose he appeared before Kullunder's house and searched it when his brother, Tara, No. 18, and his ryots, Nusso, No. 17, and Mohamud, No. 19, were found concealed in it, together with a considerable number of weapons and two fowling pieces. Kullunder Khan then thought it time to make his appearance, and as during the *interim* he seems to have effected an understanding with his opponents and could rely on their co-operation, he had only, he thought, to satisfy the police and his exemption was certain; he accordingly offered the darogah rupees 240 with the object of being brought in guiltless. This fact was immediately communicated by the darogah to the magistrate, and I have not a shadow of doubt as to the perfect truth of his representation. Unfortunately, however, the darogah has

1853.

August 15.

Case of
NUSSIMOOD-
DIN alias
SUMMON
MEERAH and
others.

1853.

August 15.

Case of
NUSSIMOOD-
DIN alias
SUMMON
MEERAH and
 others.

attempted to prove by witnesses what he should have allowed to rest on his own veracity. Offered as the money was it is not likely, even if strangers had been sufficiently near to know what was going on, that they would have been able to sustain a cross-examination in respect to the transaction. The darogah was also to blame, for not searching Kullunder's house with greater care and to have competent witnesses present at the time, in case it might be necessary hereafter to question them upon the point.

I would acquit the prisoner No. 12. I would, with reference to some recent decisions of the Nizamut ruling, that if life is sacrificed in a premeditated affray it is wilful murder, convict the prisoners Nos. 13, 14, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of being accomplices in a wilful murder committed in an affray, and sentence them to ten (10) years' imprisonment each with labor in irons, in banishment, and the prisoner No. 25, who admitted his guilt to that extent before the police, I would convict, as laid to his charge in the calender, of being an accessory before the fact to the affray and sentence him to one (1) year's imprisonment, with labor commutable to a fine of rupees 15.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.)—The sessions judge has given a very decided opinion on the guilt of all the prisoners, with the exception of No. 12 acquitted, but we see reasons for entertaining doubts regarding the value of the proof adduced against many of them.

There is no doubt that an affray took place, but there is not the same certainty as to who the instigators were, nor as to those engaged in it. The chief parties, alluded to by the sessions judge, deny possessing the interests in the subject of dispute imputed to them, and there is no clear explanation in the judge's letter to refute their statements, or to point out to the Court the source from whence the judge himself drew his information on the point. We have, therefore, to deal with all the parties as they seem to us affected by the general evidence before us. We are unable, moreover, to agree with the judge in his conclusions, that Moofezoodeen was actually killed and carried off the field. The evidence on this point is from the first most vague and indefinite; while the depositing of the body at Kullunder Khan's house, with the subsequent details of *boiling* or *burning* it, and carrying it of piece-meal, are so loosely and incoherently spoken off, and *never* traced to any foundation, that the judge does not appear to have relied upon them as facts, and consequently the alleged death is enveloped in mystery and suspicion to this day. It is not apparent from the record, that the magistrate or session, judge even attempted to trace this report

to its source, or to question the witnesses regarding the parties from whom they heard it. We turn now to the evidence on the record. There are twenty-three eye-witnesses, whose testimony more or less implicates the prisoners. In these depositions the sessions judge has placed implicit faith, and taken together as they stand on the record, they would afford, if trustworthy, a mass of evidence quite sufficient for the conviction of the prisoners. But it is impossible to allow oral evidence of this description to pass into proof in this country, without testing its fidelity in some way; and judged by the proofs to which we have subjected it, much of this testimony becomes valueless in our estimation.

On referring to the mofussil proceedings, we find that a police mohurir was the first person who repaired to the spot to hold an investigation. The first witnesses were examined by him and these men only named the prisoners, Nos. 13, 14, 17, 20, 21 and 23. On the arrival of the darogah, some ten days after the affray, these same witnesses were re-examined and deposed to the same purport. But in the fouzdarry and sessions court, they extended their recognitions to nearly all the individuals charged in the indictment: such discrepancies on their part cannot be accounted for on the score of want of memory or preparation when first examined, as they had ample time before their first or second examination in the mofussil, to correct any defect in their recollections of what occurred, but did not do so; we cannot therefore take their evidence as having any weight against those whose names they omitted, in the first instance, when twice examined by the police. Regarding the other witnesses, we find that their statements were taken down by the darogah at different dates, between the 9th and 30th of March, long after the apprehension of the greater number of those accused, who, with the exception of Nos. 22, 23, 24 and 25, were in fact apprehended before the arrival of the darogah and were in custody when these witnesses deposed to their complicity. Testing the evidence by the accounts of those who were first examined, who may be supposed to have been less influenced by interested parties, we must reject that which is not so corroborated and supported, giving it due weight however against No. 22, whose wounded state otherwise unaccounted for by him, confirms the belief that he was really present and implicated in the affray. We, therefore, convict Nos. 13, 14, 17, 20, 21, 22 and 23, of affray, with wounding and, acquitting the rest, sentence those convicted to seven (7) years' imprisonment with labor and irons.

1853.

August 15.
Case of
NUSSIMOOD-
DIN alias
SUMMON
MEERAH and
others.

PRESENT:

J. DUNBAR, Esq., *Judge*.JOODAGEERAM AND GOVERNMENT
versus

GOLAB CHAND (No. 1), AND GOWREE RAM (No. 2).

SHAHABAD.

1853.August 17.
Case of
GOLABCHAND
and another.

Two prisoners charged with theft of 786 rupees, convicted by the sessions judge one as a principal the other as an accomplice. On appeal both prisoners were acquitted owing to the weakness of the evidence.

CRIME CHARGED.—Prisoner, No. 1, theft of Company's rupees 786. Prisoner, No. 2, accomplice in the above crime.

CRIME ESTABLISHED.—Prisoner, No. 1, theft of Company's rupees 786. Prisoner, No. 2, accomplice in the above.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 26th April 1853.

Remarks by the sessions judge.—In this case the prisoner was, in the first instance, committed on the charge of fraudulently taking rupees 786, the property of the prosecutor, under the following circumstances :

The prisoners enticed the prosecutor into the shop of prisoner No. 1, and then persuading him to leave the money in the shop, they induced him to go to prisoner No. 1's house and while there, prisoner, No. 1, pretending to have occasion to go out returned to his shop, and stole the money.

The magistrate grounded his charge on the fact, that the prisoners from the first got possession of the money by fraud and "*animofurandi*."This being the case, the crime was clearly "theft," and "fraudulently taking" which is only *half* a crime by law was an untenable charge.

On this ground I acquitted the prisoner of the crime charged, solely on account of the inaccuracy of the wording, leaving it to him to commit on the charge of theft as he thought proper.

There was an oversight in this proceeding on my part, which it will be noticed. My order was passed in conformity with the Circular Order of the 7th July 1848, overlooking the fact, that that Court had in the first part of the Circular Order of the 14th November 1851, been superseded, and a different course pointed out.

I do not, however, conceive that this error in any way effects the validity of the present commitment although the special authority for the *special course* of procedure, therein indicated, is withdrawn.

The sole ground of acquittal was the inaccuracy of the charge, and there is nothing, therefore, to prevent the magistrate from committing on a separate charge.

At the opening of the trial the prisoner's council objected, that the magistrate had in his former roobukaree of commitment declared theft not proved, and that he is not therefore competent now to commit the prisoner on that charge, but on reference to the roobukaree, I find that the magistrate finding the *facts proved* merely expressed his *opinion* that the crime was *not theft* but fraud.

This is no bar to a subsequent commitment for theft under instructions from the sessions court.

The authority now given to the sessions judge, to order amendment of a calendar, would be utterly null, if such plea were good; an erroneous commitment is always made on the magistrate's opinion of the species of crime, and whenever amended by the sessions judge in respect to the crime itself, the magistrate's opinion on this point is set aside.

The facts of the case are these:—On the 5th March, the prosecutor was carrying a bag containing rupees 786, which he had just drawn from his banker; as he passed the shop of prisoner No. 1, he invited him to smoke and subsequently persuaded him to leave the shop and proceed to his house and eat. The bag of money was taken by prisoner No. 1, and deposited in the shop, the prisoner taking the key of the door with him.

While the prosecutor was performing the customary ablution before the meal, the prisoner No. 1, made some pretence for going out, and returned to his shop, when together with the other prisoner, they opened the door and carried off the bag of money.

Several eye-witnesses depose to delivering of the money in the first instance, and the subsequent carrying off the money. The evidence to both these points is consistent and clear.

The story of the prisoner No. 1 is, that as he was returning with the prosecutor after their meal, prisoner No. 2, came and told him that the door had been broken open and that he (prisoner No. 2,) had put on his own lock! That he and the prosecutor then went together to the shop and found that the money was stolen.

Prisoner No. 2 says, that he saw the door open and therefore affixed his own lock!

He gave several witnesses to establish their pleas, but nothing can be more improbable than their story, nor more unsatisfactory than the evidence of the witnesses.

The assessors return a verdict of guilty of the charge.

The deliberate rascality of the prisoners' whole procedure, their relationship to the prosecutor and the amount of money stolen, renders them deserving of exemplary punishment. I have therefore sentenced them to five (5) and four (4) years respectively, and considering the case, as one in which the pro-

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Case of
GOLABCHAND
and another.

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visions of Act XVI. of 1850, may be beneficially applied I have inflicted a fine equivalent to the amount stolen which will be realized from the property and given to the prosecutor.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Mr. Norris appeared for the prisoners. Baboo Sumboonath Pundit for the prosecution.

The prisoner, Golab Chand, No. 1, admits having received the bag of money at the hands of the prosecutor, and having placed it in the *kotree* of his shop ; he also admits having been absent (once only as alleged in the first deposition of the prosecutor) some time from his house, leaving the prosecutor there. His plea that he had gone out to attend a *punchayet* was established. The prisoner, Gouree Ram, No. 2, admits having put a padlock of his own in the door of his relative, Golab Chand's shop, when he found the shop open, but these admissions, however they may raise suspicion, furnish no distinct evidence against them as to the theft. The proof of the charge lies in the evidence of the three eye-witnesses, who all swear that they saw the two prisoners come to the shop, and take away the bag of money. Soumeer Aheer and Singa Rac, depose, that they were left by the prosecutor to wait near the shop during his absence ; and that while thus waiting, the prisoners came, and took the bag of money out, as they say, in a stealthy manner, as if anxious to avoid observation. Apart from the improbability of their permitting the money to be taken away, under any pretence, until the prosecutor should return, it is to be noticed that neither in his petition to the magistrate, nor in his deposition before the darogah of the 6th March, did the prosecutor mention the names of these two witnesses at all, an omission which is quite unaccountable, with reference to the tenor of their evidence ; their names were added to the list of his witnesses on the 6th, but they were not examined by the darogah, till the 9th of March, under these circumstances, I can place no reliance on their evidence and reject it *in toto*. There remains the evidence of Bhagerutty, he is the brother-in-law of the prosecutor, and according to the statements of both, he was present, when prisoner, No. 1, put aside the bag of money ; he says in his evidence, that shortly after the prosecutor and prisoner No. 1 had gone away, he saw the latter return with prisoner No. 2, and take away the bag of money. Is it to be credited, that he, the brother-in-law of the prosecutor, would have permitted this without either himself proceeding to inform the prosecutor, or accompanying the prisoners ? Such conduct is possible, but I must say, I think it very improbable. Upon the whole, I consider the evidence of too uncertain a character, to warrant conviction, I accordingly acquit the prisoners and direct their release.

PRESENT:
J. R. COLVIN, Esq., Judge.

INDERNARAIN PUHAREE

*versus*BEHAREE SINGH (No. 2,) RAMJEEBUN MISSER
(No. 3) AND BENEE TEWAREE (No. 4, APPELLANT.)

CRIME CHARGED.—Dacoity in the dwelling-house of the prosecutor and plundering therefrom Company's rupees 2,500; 2nd count, aiding and abetting in the above, and 3rd count, prisoner No. 4, privity to the above,

CRIME ESTABLISHED.—Nos. 2 and 3, aiding and abetting in the dacoity, and No. 4, privity to dacoity.

Committing Officer—Mr. V. H. Schalch, magistrate of Mid-napore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 31st May 1853.

Remarks by the sessions judge.—On the night of the 30th April, the lodging of the prosecutor in the centre of the town of Midnapore was entered by a gang of thieves, who broke open a *pettara*, and plundered therefrom cash to the amount of Company's rupees 2,500. The prisoner No. 2, Beharee Sing, was arrested by some neighbours, the witnesses Nos. 1 and 2, whilst in the act of making his escape. The prisoner No. 4, Benee Tewarree, was arrested the following day on suspicion and on his statement the prisoner No. 3, Ramjeebun Misser, was also seized. The prisoners, Nos. 3 and 4, confessed before the darogah and the magistrate, the former to his complicity in, and the latter to his privity to, the robbery. In this court the prisoners all plead *not guilty*, but offer no defence further than that their confessions were extorted by threats and promises. The confessions were taken down by the darogah on the 1st May, and reported before the magistrate the same day. Their is no reason to doubt their truth and that they were voluntarily made. The only evidence against, prisoners, Nos. 3 and 4, are their confessions, and the measure of their guilt must be estimated by them: prisoner No. 3, in his confession, implicates No. 4, as an accomplice, but the latter admits in his confession only a guilty knowledge of the robbery and denies that he was actively engaged in it. There is presumptive proof that he was the instigator of it and the probabilities are, that he was concerned in it; but this is not enough to convict him on the 1st and 2nd counts of the charge. The prisoner No. 2 denies his guilt throughout, but his identity is sworn to by the witness No. 14, as the party who seized and held him down whilst his accom-

MIDNAPORE.

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Case of
BENEE TE-
WARREE and
others.

Prisoner
convicted
by the
sessions
judge of privi-
ty to dacoity,
acquitted in
appeal, his
statement not
amounting to
an admission
of privity.

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August 17.
Case of
BENEETE
WARREE and
others.

plices plundered the *pettara*, which is corroborated by his arrest on the spot with a club in his hand, by the witnesses Nos. 1 and 2, at the moment the hue and cry was raised. The prisoner, in his defence before the magistrate and darogah, varies his statement and is unable to explain his presence at the prosecutor's door, when the thieves were making off with the property they had plundered. The presumption is strong that he was an aider and abetter in the dacoity. Prisoners Nos. 2 and 3, are accordingly convicted on the 2nd count, and prisoner No. 4, on the 3rd count of the charge, and sentenced as indicated in the statement.

Sentence passed by the lower court.—Prisoners Nos. 2 and 3, to seven (7) years' each and prisoner No. 4, to five (5) years' imprisonment, with labor and irons, and to pay a fine of rupees 2,386, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The Prisoner No. 4, has since appealed. As observed in the remarks of the 29th ultimo, on the case of the other prisoners, this prisoner has confessed to no crime. He has said merely that No. 3 and others, had spoken to him before the occurrence of the robbery of their having an intention to commit it, but that he had positively refused to join in it, and was absent from Midnapore on the night when it happened, and knew nothing more about it.

This is not a confession of privity to dacoity, as the judge has taken it to be, and on that ground convicted the prisoner. The judge is referred to the definition of that offence in the Circular Order, No. 8 of 7th June 1847. The prisoner does not admit any knowledge of the actual commission of the crime.

There being no other proof against him, he must be acquitted.

PRESENT:

J. DUNBAR, Esq., Judge.

BIROO MUNDLE AND GOVERNMENT

versus

BURRA BABOO SHEIKH (No. 1,) **ANDARI GHOSE** (No. 2.) **JUGGUNNATH GHOSE** (No. 7,) **NUNDRAM GHOSE** (No. 8,) **AND DINOBUNDHOO GAURAR** (No. 12.)

CRIME CHARGED.—1st count, prisoners Nos. 1, 2, 7, 8 and 12, with dacoity in the house of the prosecutor, Biroo Mundle, in which property to the value of rupees 294-15 annas was plundered; 2nd count, prisoners Nos. 1, 2, 7, 8 and 12, accomplices in the said dacoity, and 3rd count, prisoners Nos. 2, 7 and 8, receiving and keeping a part of the property knowing it to have been acquired by the said dacoity.

CRIME ESTABLISHED.—Prisoners Nos. 1 and 12 of dacoity, and prisoners Nos. 2, 7 and 8 of dacoity and of receiving and keeping in their possession plundered property, knowing it to have been acquired by dacoity.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddeah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddeah, on the 27th May 1853.

Remarks by the officiating additional sessions judge.—This is a daring dacoity, and planned and executed with the utmost boldness. I have never seen prisoners at the bar demean themselves with the insolence and utter disregard of order and authority, which characterized the conduct of this gang, (the remainder of whom have been disposed of as by my statement No. 8,) during the trial. The court was continually interrupted by their vehement vociferations during the examination of the witnesses for the prosecution in comment on the evidence, and it was with difficulty at times that order was restored. The persons concerned are inhabitants of the Moorshedabad district, and crossed the river in three boats, for the purpose of committing this dacoity. From their conduct and bearing, throughout the whole of the transaction, I am clearly impressed with the idea that they belong to an organized band, at least the greater part of them, and have long set the laws at defiance. The moment they entered the premises of the prosecutor, they fell upon him and held him down, while they forced doors and broke open boxes. As soon as the work of plunder commenced they released him, and carried off cash and property, consisting of silver ornaments and wearing apparel, to the amount nearly of rupees 300. The magistrate very

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Case of

**BURRA
BABOO
SHEIKH** and
others.

Two pris-
oners con-
victed of
dacoity and
three others of
receiving the
plundered pro-
perty, and sen-
tenced to six-
teen years'
imprisonment.
Appeal reject-
ed.

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Case of

BURRA

BABOO

SHEIKH and
others.

judiciously made a tender of conditional pardon to a confessing prisoner, and the information he gave proved most valuable on the trial and has very materially tended to convict the prisoners, and elucidate the particulars connected with the planning and execution of the dacoity. I gather from his evidence, that the gang systematically planned the dacoity and stationed themselves in two bodies, at different places, before they united and proceeded to the attack, and this circumstance coupled with the fact that they are all residents of one village, with a solitary exception, adds weight to my suspicion that the gang is an organized one. On the trial the approver names all the persons committed, and the apprehension of the prisoners in the following manner, as detailed by the witnesses for the prosecution, leaves no doubt on the mind as to their guilt. Some of them it appears are released convicts and consequently looked after at nights by the chowkeedars, gomashtas and munduls of their village. On the night in question, the customary enquiry was made at the houses of the suspicious characters and they were found absent. Intelligence of the circumstance, was immediately circulated throughout the village, and on a general search being made for the missing parties, it was discovered that others were not forthcoming. The number at length included all the persons committed and the circumstance so raised the suspicions of the inhabitants, that they formed themselves into a council then and there, and agreed to set a regular and systematic watch at the unoccupied houses till day should dawn. This was done, and towards morning one after another, all, except the prisoner Andari Ghose, were apprehended on their return home, the three first with articles of plundered property, and the last with several pieces of gunny carried off by him and others of the gang on their way back, which they found lying on the banks of the Jelliughee awaiting shipment for transmission to Calcutta. The arrest was most complete, and the property found on the person, except in the case of the prisoner No 1, who dexterously contrived to throw a small parcel into his house on his seizure, which was whipped up by the females of the family and never recovered. This parcel doubtless contained the gold and silver ornaments, he admits having obtained in the plunder. The prisoners Baboo Sheikh, Jugunnauth Ghose and Dino Gaurar confess both before the police and in the foudaree court. The prisoner Andari Ghose confesses before the police, but repudiates his confession before the magistrate. In his house, however, were discovered two pieces of cloth of the finer order, perfectly identifiable, and subsequently a broken silver bangle. The latter article was found on a second search, which not considering altogether regular, I have not attached

particular importance to, particularly as the proof against the prisoner is independant of the discovery made therin. The magistrate, however, personally explained to me that the first search was made immediately on the prisoner's arrest and the second, after his mofussil confession in which he admitted having received the silver article, which was subsequently produced. Had this information been before me, at the time the witnesses were examined on the point, I might have been induced to take their evidence though with reservation, but I declined doing so under the circumstances, except in the instance of the person whose examination I had commenced, and from whom I ascertained the fact of the double search. His evidence, however, clearly proved the finding. The prisoner attempts to show that all the articles found in his house are his property, but his witnesses distinctly and unequivocally deny all knowledge of the fact, and in the most positive terms disprove his plea. In addition to all this, he is named as the leader of the gang in most of the confessions; his complicity is sworn to by the approver, and he was one of the absentees at whose house a watch was set. His conviction is based on these considerations. The prisoner Nundram makes no admission, but the charge is fully established against him by the evidence of the approver, his absence from home and his arrest, together with cash and a silver bangle and a quantity of gunny pieces, appropriated in manner above described. He is a notoriously bad character and it was the search and enquiry made after him, that led to the discovery of the absence of so many people from the village, on the night of the dacoity. He makes no attempt to deny his possession of the ornament, or any averment that it is his property. The magistrate deserves great credit for his personal exertions in this case, and the pains he has taken to arrange the evidence.

Sentence passed by the lower court.—To be imprisoned in banishment for fourteen (14) years and in lieu of stripes for two (2) additional years, total sixteen (16) years each, with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The conviction is good. The Court see no reason to interfere.

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Case of

BURRA

BAROO

SHEIKH and
others.

PRESENT:
J. DUNBAR, Esq., *Officiating Judge.*

GOVERNMENT

versus

ABOOL HOSSEIN.

BACKER-
GUNGE.

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Case of
ABOOL HO-
SEIN.

The evi-
dence proved
that the pri-
soner killed
his wife, but he
was acquitted
of the charge
of murder on
the ground of
insanity.

CRIME CHARGED.—Wilful murder of Musst. Murrium,
Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 23rd July 1853.

Remarks by the sessions judge.—The prisoner was reported to have murdered his wife, on the 25th March 1851.

The darogah arrived on the spot the same day, and made his inquiries. There were no eye-witnesses, but it was apparent, without any doubt, that the prisoner had that morning murdered his wife by frequent blows with a pole, armed at one end with a flat piece of iron. His mother, who lived in the same enclosure, was woken up by hearing a gurgling noise in the room where the prisoner slept with the deceased.—On her pushing open the door, and asking him what he was doing, he ran out on the opposite side. A glance at the body sufficed to inform her of what had happened, and the mother therefore followed her son, calling upon the neighbours to lay hold of him. He was presently caught and taken back to his house, which was soon after visited by a number of the villagers.

On the arrival of the darogah, these particulars were elicited. The mother and all the neighbours said that the prisoner had not been in his right mind, for 8 or 10 days previous to the murder. He was however quite capable of giving his own defence, and was sufficiently in his right mind to plead insanity. The confessions before the darogah and before the magistrate are so nearly similar, that a translation of either of them will suffice. The confession before the magistrate was taken on the 26th March 1851, the day after the murder, and the following is a full and literal translation of it:—

The confession of Abool Hossein taken before the magistrate on the 26th March 1851.

I did kill my wife with this weapon. I dont know the date but it was in Cheyt. I and my wife were asleep in the house with the door facing the north.—I was going out early in the morning, when my wife Murrium said to me you must not leave your house. Hearing this I became like a mad man, and with this weapon, which was below a *machan* in the same room, I gave my wife several blows and killed her. I then ran out and was going towards Attaullah, chowkee-

dar's house, when Buddon Seel seized me. For 8 or 10 days before this, my heart was in a very unsettled state, and I committed the deed when I was out of my mind. It was 11 days before the murder, that my wife told me I must not go outside my house.

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Case of
ABOOL HOS-
SEIN.

Question.—Why was your heart in an unsettled state?

Answer.—Maun Sheekdar wants to marry my wife; when I learnt this my mind became deranged.

Question.—Have you any improper attachment for any one?

Answer.—There is no improper attachment existing between me and any one else.

Question.—What led to your becoming deranged?

Answer.—I am a furrazee, Maun Sheekdar, who is not a furrazee, is a chief man in the village, he has a design of forcibly marrying my wife; this caused me to become deranged.

Question.—Had your wife any improper intimacy with any one?

Answer.—With no one; her age was about 20, and she was always very correct in her conduct.

Question.—How many blows did you give your wife?

Answer.—I cannot say exactly, but I gave her several.

Question.—Did any one see you kill your wife?

Answer.—I can't say if any one did or did not.

Question.—Did you kill your wife while she was asleep?

Answer.—Yes, while asleep.

Question.—Then how could she have told you, you must not go out of your house?

Answer.—It was not that morning that she told me so, but it was sometime before. •

The medical officer was instructed to watch the prisoner, with a view to ascertain the state of his mind. His deposition was twice taken on the subject. On both occasions his opinion was, that the prisoner was feigning madness. The magistrate, however, thought it the more prudent plan to send the prisoner to the insane hospital at Dacca. From that he has been lately discharged, as cured, and has undergone his trial before me.

There were no eye-witnesses, but from the evidence of the prisoner's mother; from the prisoner sleeping alone in the room with the deceased; from the murder taking place in that room; from his flight from that room; from his apprehension and confession, there can be no doubt that he was the murderer.

The point on which any uncertainty hangs, is in respect to whether he was of sane or insane mind when he did the deed. His madness is described by the witnesses to have

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SEIN.

been, that sometimes he abused people and chased them, and at others he would do dirty tricks.

In his defence he says I did not kill my wife. I never had a wife, my mother and father died when I was very young, where was I to get the money to marry a wife? Whose wife Murrium (deceased) was I can't say, I know not who she was or who murdered her. I have come here having been told by the people to do so.

This defence clearly betrays unsoundness of mind either real or pretended. To judge the better on this point, I caused Dr. Green's evidence to be taken. The following is the letter I wrote to the magistrate on the occasion:—

*From the sessions judge to the magistrate of Backergunge,
No. 134, dated the 2nd July 1853.*

SIR,—I request that you will be so good as to ask the magistrate of Dacca, to take the deposition of Dr. Green as to what he observed of the state of mind of the prisoner Abool Hossein, who has lately been discharged from the insane hospital.

The points on which I wish Dr. Green's evidence to be taken are—*First*,—As to the prisoner's state of mind on his first admission into the insane hospital.—*Second*,—What were the alterations, if any, which took place afterwards.—*Third*,—Whether from the doctor's observations, during the time that the prisoner was in the hospital, he considers that the man ever was before, or during his stay, given to fits of madness.—*Fourth*,—What the doctor's facts and reasons are for the conclusion which he may come to on the above points.

Dr. Green's evidence must be taken on oath, in the presence of two witnesses, who should subscribe their signatures and attestation to it, and these witnesses must be sent by the magistrate to prove the doctor's deposition before my court.

Dr. Green's evidence was accordingly taken, and the following is a transcript of it.

The deposition of William Abbott Green, civil surgeon of Dacca, taken before me, and in the presence of the witnesses, Gopee Nath Paul and Bishnub Churn Shah, this 14th day of July 1853.

1st Question.—What was the state of mind of Abool Hossein, when he was first admitted into the Dacca insane hospital?

Answer.—I thought him quite insane.

2nd Question.—What were the alterations, if any, which took place afterwards?

Answer.—He suffered from cholera and dysentery in November 1851, since which time he has exhibited a return of

answering when addressed (which he did not do at first) and leaving off his previous mad antics, and for some months previously to his charge, behaving himself quietly and rationally : at this time he expressed great anxiety to go home to provide for his mother, and described clearly his former occupation ; and after a lengthened observation of two years, I considered his mind to be restored, and so recommended him for release.

3rd Question.—Do you consider, from your observations during the time that the prisoner was in the hospital, that he ever was before, or during his stay, given to fits of madness?

Answer.—I am told that he was a "Gunjah" smoker, and I think it probable that he was subject to fits of madness before admission into the insane hospital, and I have no doubt of his being subject to fits of madness when he was in hospital, particularly during the first few months of his stay there.

4th Question.—What are the grounds and reasons of your coming to the above conclusion?

Answer.—The evidence of madness in his first coming under my notice were quite clear to my mind in a variety of ways, and the manner of his gradual improvement and restoration to soundness of mind has been described in my answer to the 2nd question.

This evidence was attested before me by two witnesses, in whose presence it was recorded.

I then put the prisoner on his defence again, and he then spoke with considerable irritation and vexation, and it seemed to me that he thought himself hard used in not being summarily released, having made out such a good case of insanity.

Nothing but Dr. Green's decided opinion, that the man was mad when he went first into the insane hospital, would lead me to hesitate in giving an opinion adverse to the supposition of his insanity. He himself gave a reason for the murder, than which no motive oftener leads to such a crime, *viz.* jealousy ; his conduct after the deed was that of a man in his natural mind, and his confessions were full, clear and circumstantially consistent with the facts. It was not like a mad man to plead insanity, and his confession before the magistrate is especially indicative of his being in his right mind. I may allude particularly to that part where there was a seeming contradiction, between his wife telling him he would not be allowed to leave his house, and his saying that she was asleep when he murdered her. The manner in which he explains this, indicates that he was in full possession of his senses. Except then the evidence of the neighbours and the opinion of Dr. Green, there is nothing in the case upon which to rest a belief that the prisoner committed the crime in that state when the law holds him guiltless. The testimony,

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however, of the doctor, is so unhesitating in favor of the man being of unsound mind, that I should not be justified in coming to a verdict contrary to that opinion.

The jury find him guilty of the crime laid to his charge, but consider that he was of unsound mind at the time. In this I am bound, after Dr. Green's evidence, to concur; and in recording my opinion that he is entitled, on account of insanity, to his acquittal, I beg to recommend that he be not set at large, but that he be detained in custody during the pleasure of Government.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I cannot concur in the conclusions of the sessions judge, as set forth in the penultimate paragraph of his report. I find that the mofussil investigation was begun on the very day of the murder, and completed within the next four days, so that there could scarcely be opportunity for the friends of the prisoner to concoct the story of insanity. Almost all the witnesses stated in the mofussil, not only that the prisoner had committed the act while labouring under temporary insanity, but that he had once before been insane; and the father of the deceased gave a similar statement on oath, declining on those grounds to prosecute. He, as also several other witnesses, declared that the prisoner had no cause of jealousy whatever, and that the story about Mana Sheikdar was merely a mad man's invention. With such evidence before me, however sane the prisoner might subsequently have appeared to be, I should have been slow to believe that the plea of insanity was utterly false; but when I find this evidence confirmed by that of the medical gentleman, who had the prisoner under his care and observation for two years, I can come only to the conclusion, that the prisoner has been subject to occasional fits of madness and that he committed the murder with which he is charged during one of those fits. Believing that when the prisoner killed his wife, he was in a state of mind which rendered him incapable of knowing that he was doing an act forbidden by law, and for which he cannot therefore be held responsible, I acquit him of the murder.

The sessions judge will deal with the prisoner according to the provisions of Act. IV. of 1849.

PRESENT :

SIR R. BARLOW, BART., Judge.

GOVERNMENT AND BHOYRUB NAPIT,
CHURENDAR,

versus

SEEROO DOME, CHOWKEEDAR.

CRIME CHARGED.—1st count, river dacoity on the boat of the prosecutor's master, in which property to the value of Rs. 424-15 annas was plundered; and 2nd count, knowingly receiving and having, in his possession plundered property acquired by the above river dacoity.

CRIME ESTABLISHED.—Knowingly receiving and having in his possession plundered property acquired by a river dacoity.

Committing Officer—Mr. Geo. Hewett, deputy magistrate of Cutwa.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 18th June 1853.

Remarks by the sessions judge.—No evidence was offered to prove the 1st count.

The 2nd count has been satisfactorily established by the prisoner's voluntary confession, proved by the evidence of two credible witnesses and corroborated by his having pointed out where he had buried the property, which he acknowledged having received from the persons he named, who he was aware had committed the dacoity.

Sentence passed by the lower court.—Five years' imprisonment with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Baronet)—The prisoner confessed, before witnesses who verify his confession, to the police, and produced sundry articles, cloths, old and new, buried, in the presence of witnesses who depose to the fact.

The cloths are recognized by the several deponents. I confirm the sessions judge's sentence.

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Case of
SEEROO
DOME CHOW-
KEEDAR.

Prisoner
convicted of
receiving and
possessing
plundered pro-
perty, acquired
by river daco-
ity, and sen-
tenced to five
years' impri-
sonment. Ap-
peal rejected.

264 CASES IN THE NIZAMUT ADAWLUT.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND BYKUNT JOOGEE,
versus

NUDDEAR CHAND HARREE (No. 3,) MANICK HAR-
REE (No. 6,) AND DUSOKUT HARREE (No. 7
APPELLANT.)

BEERBHOOM.

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Case of
DUSORUT
HARREE and
others.

Prisoner
convicted of
privy to da-
coity in his
mofussil con-
fession to that
effect, acquit-
ted on appeal.

CRIME CHARGED.—1st count, Nos. 3, 6, and 7, dacoity attended with slight wounding, committed in the house of Bykunt Joogee, prosecutor, from whence property valued at rupees 62-3 was plundered; 2nd count, No. 3, knowingly receiving property acquired by committing the above-mentioned dacoity; 3rd count, Nos. 6 and 7, privy to the above-mentioned dacoity.

CRIME ESTABLISHED.—Prisoner No. 3, of dacoity attended with slight wounding; No. 6, of being an accessory before the fact of dacoity with slight wounding, and prisoner No. 7, of privy to dacoity with slight wounding.

Committing Officer—Moulvee Fyzocllah, law officer, with full magisterial powers, Zillah Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 18th July 1853.

Remarks by the sessions judge.—The prosecutor's house was attacked by a gang of dacoits, on the night of 16th May 1853, and plundered of property valued at rupees 62-3.

The prisoner, Nuddear Chand Harree, was knocked down and captured, just as he was escaping from prosecutor's house after the alarm was given: he confessed both in the mofussil and before the magistrate.

The prisoner, Manick Harree, confessed before the darogah and before the magistrate, that he was present when the gang assembled, preparatory to their setting out for the prosecutor's village, but he denies having accompanied them, though there is good reason for believing he was a principal in the crime. The prisoner, Nuddear Chand, mentioned his name as being one of the party. The prisoner, Dusorut Harree, admitted in the mofussil, that he was aware that his son, Nuddear Chand, had gone to commit the dacoity, and indeed he must necessarily have been so.

The defence of the prisoners, and the evidence of their witnesses, tended in no degree to throw a doubt upon the satisfactory proof of their guilt. I therefore convict prisoner No 3, Nuddear Chand, of dacoity attended with slight wounding, and sentence him to ten years' imprisonment;

prisoner No. 6 of being an accessory before the fact, and sentence him to seven years' imprisonment, and prisoner No. 7 of privity to dacoity, and sentence him to five years' imprisonment, all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.) The prisoner appealing is the father of a man convicted of dacoity, and the sessions judge has convicted the prisoner of privity to the same offence, on the ground that he confessed to the police, that he knew his son and others had committed the dacoity, and the sessions judge adds that he must necessarily have been aware of his son's participation in the robbery. I do not think an admission of this kind, said to have been made before the police, can be relied upon. The prisoner denied the fact before the magistrate on the following day, and repudiated the thanna confession. There is no other proof on the record and I, therefore, acquit the prisoner.

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Case of
DUSORUT
HARREE and
others.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

RAMCHAND GHOSE (No. 10), PORAN HARREE (No. 11), TARACHAND BAGDEE (No. 12), SHAMA BAGDEE (No. 13), AND SERAJOODDEEN (No. 14.)

CRIME CHARGED.—1st count, dacoity in the house of Sheik Ausheeuddeen at Aulasin on the night of the 17th January 1844, and plundering therefrom property to the amount of rupees 1456-8, and 2nd count, with having belonged to a gang of dacoits.

Committing Officer—Mr. S. Wauchope, commissioner for suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 19th May 1853.

Remarks by the officiating sessions judge.—The prisoners, Nos. 10 to 14, are charged with having committed a dacoity in the house of Sheik Ausheeuddeen in Thanna Pandoon, in this district, on the night of the 17th January 1844, and with belonging to a gang of dacoits. They plead *not guilty*. The prisoner No. 1 confessed before the commissioner for the suppression of dacoity that he was associated with the gang of Noveen Bagdee and Srecoedhur Bagdee, and of the approvers to which the other prisoners belonged.

The commitment is made on the evidence of the approvers 1 and 2, Gopal Doolye and Rakal Bagdee, who depose to their having committed, along with these prisoners, the dacoity

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Case of
RAMCHAND
GHOSE and
others.

Four prisoners convicted
of dacoity and
of having be-
longed to a
gang of dacoits
and sentenced
to transporta-
tion for life.

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RAMCHAND
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others.

at Pandooa, on which the specific charge is made, and to their being associated with them and committing together numerous dacoities.

When the dacoity, in Thannah Pandooa occurred in 1844, several prisoners were arrested and committed to the sessions, amongst them the chiefs of the gang, Noveen and Sreestoedhur, who were however released before the sessions, the identification by the chowkeedar, which was the evidence before the court, not being considered trustworthy.

The approver 1 Gopal Doolye, deposes that at this time the gang raised money from the proceeds of the dacoity, and with the view of obtaining release of the two sirdars, bribed the amlah of this court.

The depositions given by the approvers are corroborated, on reference to the nuthee of the dacoity case in 1844, and as I do not see any thing to shake testimony in such depositions, I find these prisoners guilty of the charges preferred, which I believe fully established against them. I recommend that the prisoners be sentenced to transportation beyond seas for life.

Resolution of the Nizamut Adawlut, No. 639, dated 4th June 1853.—(Present : Mr. J. Dunbar.)—The Court, having perused the proceedings connected with the trial of Ramchand Ghose and others, observe that if the evidence of the two approvers can be received as trustworthy, it is sufficient to convict the prisoners of the dacoity in the house of Ausheedeen; but to enable the Court to judge of the degree of credit to be attached to the evidence of these men, they wish to know whether the names of the prisoners, as connected with this dacoity, were mentioned in their original confessions, which the sessions judge is requested to submit.

The two approvers also state generally, that the prisoners have been concerned in various other dacoities with them. Gopal Doolye particularizes one only, known as the *Narkul-shaiee* dacoity, in which all the prisoners were engaged, while Rakal Bagdee mentions three dacoities, in one of which (Goai Nalkee) were concerned Ramchand, Poran Harree, and Serajooddeen; in another (Katespore Beer Shimole) Tarachand only; and in the third (Esapore) Shama Bagdee. His testimony, however, is not of a positive character; he speaks only from vague recollection. It is necessary that these men should be questioned, more particularly, as to the several dacoities in which they and the prisoners were jointly concerned, and that any mention they may make of past dacoities should be tested by reference to old papers. The mohafiz should be required to report how far the statement of the witnesses may be borne out by the records. The Court

direct that the papers be returned to the officiating sessions judge, with instructions to complete the proceedings in the manner indicated above; after doing so, he will take a fresh defence from the prisoners and re-submit the case.

In reply to the above resolution, the sessions judge forwarded the following letter, No. 259, dated 13th August 1853.

With reference to the resolution of the Sudder Court, No. 639, of the 4th June, I beg to transmit herewith copy of a letter* from the commissioner for suppression of dacoity, No.

Reports of the foudaree mohafiz of Hooghly and Burdwan, and sherishtadar of the commissioner for suppression of dacoity.

Nuthees of dacoities at Katapore, Goal Nalkee Has-somhattee, Alasin and Boro Bobinkoolee.

245, of the 1st instant, together with the reports and nuthees as per margin, referring to dacoities in which the approvers, Gopal Doolye and Rakal Bagdec, depose that the prisoners Nos. 11 to 14 were engaged with them.

The further examination of these approvers, required by the Court, has been made, as will be perceived by the sessions proceedings of the 22nd ultimo and 12th instant, and a fresh defence taken from the prisoners 11 to 14, prisoner Ramchand Ghose No. 10 having died in jail.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The case is now complete. The approvers swear that all the prisoners took part with them in the Aulasin dacoity, the occurrence of which is certified, both on the oath of the owner of the house plundered, and by the record of enquiry at the time. They also swear, that the prisoners have at various times been concerned with them in several other dacoities. There is no reason to doubt the entire truthfulness of their evidence on this point, as their depositions correspond with the statements made in their original confessions, which

* From commissioner for the suppression of dacoity, No. 245, dated 1st instant.

With reference to your letter, No. 223, dated the 22nd ultimo, in the case noted in the margin, I have the honor to inform you, that a further kyfeut, of the description enjoined in your letter, has been prepared by the serishtadar of this office, who has charge of the records, showing in what dacoity each defendant under trial has been named by the two approvers and the result of the search which has been made to discover the papers of each case of dacoity. Those cases which have been found will be forwarded to your Court, and where the cases are not forthcoming, the kyfeut of the serishtadar will record the fact and, as far as possible, explain the reason of their absence.

The delay in re-submitting this case has been caused by the necessity of writing to Burdwan for the papers of a case which Mr. Wauchope had returned to that district.

The witnesses and defendants can be present at your Court on any day which you may fix.

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were recorded under such circumstances as to preclude the possibility of collusion. The occurrence of most of the dacoities mentioned is verified from the old records.

The Court sentence the prisoners to imprisonment for life in transportation beyond sea.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT AND NEMYE SHEIKH

versus

MEROO SHEIKH (No. 4) AND SHEIKH KASEM
MAHOMED (No. 5).

RAJSHAHYE.

1853.

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Case of
MEEROO
SHEIKH and
another.

Two prisoners convicted as accomplices in dacoity and sentenced by the sessions judge to seven years' imprisonment. In appeal one was acquitted.

CRIME CHARGED.—Dacoity in the house of Nemye Sheikh, prosecutor, on the night of 1st of May 1853, corresponding with the 20th Bysack 1260 B. S., in which property valued at rupees 1002-10 annas (including 975 rupees in cash) were carried off.

CRIME ESTABLISHED.—Accomplices in dacoity.

Committing Officer—Mr. F. L. Beaufort, officiating joint-magistrate of Purnah.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye.

Remarks by the sessions judge.—This was a simple dacoity perpetrated in the usual manner. The prisoner No. 4 confessed both before the deputy magistrate and the police, and both confessions were proved to have been voluntarily made. Both prisoners were recognized at the time by the owner of the house, (witness No. 1) a very old man and who could not stand upright, and was therefore examined sitting, the prosecutor (his son), and also by two neighbours (witnesses Nos. 2 and 3); I have, therefore, convicted them of being accomplices in dacoity and sentenced them as stated in the preceding column. The trial was held under Act XXIV. of 1843, and the Court's circular order of the 5th July 1844.

Sentence passed by the lower court.—To seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The evidence against Meroo Sheikh, prisoner No. 4, is sufficient, but I think it is too doubtful for conviction in the case of Sheikh Kasem, No. 5. He was not named at all, either in the mofussil or before the magistrate, by the old man; and the son, in his first deposition before the darogah, could not speak with certainty to the point of identification. I give this prisoner the benefit of the doubt and acquit him.

PRESENT :
J. DUNBAR, Esq., Judge.

HURRIS MAHOMED

*versus*POOKIAH *alias* POKYE.

CRIME CHARGED.—Committing a dacoity at night at the house of the prosecutor, and plundering therefrom property belonging to him, valued at rupees 286-10.

CRIME ESTABLISHED.—Dacoity at night at the house of the prosecutor, and plundering therefrom property, valued at rupees 286-10.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.
Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 10th June 1853.

Remarks by the sessions judge.—On the 17th of March, Mungazee, a relation of the prosecutor, gave information at the thannah that his father-in-law's house had been attacked in the course of the preceding night by dacoits, who, however, being disturbed by the arrival of the neighbours, had extinguished their torches and escaped without doing any injury, or carrying away any property.

On the 26th of the same month, the prosecutor himself appeared at the thannah, and accounting for the delay by stating that he had been ill, declared that 20 or 25 dacoits had attacked his house, tied his servants, and breaking open his boxes and *pettarrah*, had carried off property of the value of Company's rupees 380-10. His relation, Mungazee, had been directed by him to proceed with the village chowkeedar to the thannah and gave information of what had taken place, but in doing so had wholly mis-stated the circumstances attending the occurrence. He added that his servant Sooltan Dhalee, (witness No. 84,) had recognised certain of the dacoits, namely, Mohomuddee (not apprehended,) Pookiah *alias* Pokye (prisoner No. 8), Razye Dye (not apprehended), and Mohabullah (prisoner No. 9.)

The darogah on the 1st of April took the deposition of the servant referred to. He deposed, that while sleeping in the outer house or cutcherry of the prosecutor's premises with Mungazee, (witness No. 99), Alec Mahomed (witness No. 83), Pauchewree and Jogger Mahomed (witness No. 85,) he was aroused by the entrance of 20 or 25 dacoits, six of whom in the first instance, confined the sleepers to the ground by placing and holding over them, as they lay in line, long rafters of the *sooparee* tree (such as are used for meechangs), one across their necks, another across their chests and the

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Case of
POOKIAH
alias POKYE.

A prisoner convicted of dacoity and sentenced to ten years' imprisonment.
Appeal rejected.

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third across their legs. They were then taken up one by one and their arms tied behind their backs. Five of the dacoits then commenced beating the witness and his companions, while the rest, lighting 5 or 7 mussels, entered the inner houses, from whence the witness heard the sound of breaking open boxes. They were thus occupied for some time (2 dundas or ghurrees) when the neighbours being aroused they fled. The witnesses spoke to recognizing Dagun Karree, (prisoner No. 10), Zuhirooddin (No. 12), Mohabullah (No. 9), but no one else.

The darogah proceeded to inspect the premises and observed the box and *pettarrah* broken open, and received from the prosecutor a torn cloth, two broken bamboos, and a *sooparee* rafter, which he stated the dacoits had dropped in the hurry of their flight. He then proceeded to search the houses of Mohomuddee, Mohabullah (prisoner No. 9), Pokye (No. 8), Razye Dye and Punchoo, but discovered nothing to justify suspicion against them. The prisoner Pokye, (No. 8) however, made a confession which implicated Zuhirooddin (prisoner No. 12), Moteeullah (No. 11), Dagun (No. 10), Sami Bhola Gazee and Dilgazee, whose houses were also searched, but with the same result, nothing suspicious being found within them, while they denied any participation in the dacoity. The darogah concluded his report on the subject by stating his opinion, that the persons implicated in the dacoity were Pokye (prisoner No. 8), Motecullah (No. 11), Dagun (No. 10), Zuhirooddin (No. 12), Mohabullah (No. 9), Somai Dilgazee, Bholah Gazee, and Punchoo Sircar. Mohabullah (prisoner No. 9) and Punchoo Sircar have been before punished for theft and dacoity. The fact of none of the stolen property being recovered, the darogah attributed to the prosecutor's delay in laying his statement of the occurrence before the police, which afforded the dacoits time to conceal it.

Before the sessions judge, who tried the case without the assistance of assessors, the prisoners pleaded *not guilty*.

The prosecutor stated that he was suffering from fever on the night of the occurrence and sleeping in his northern house, when about midnight he was awoke by the noise of men and glare of torches. He heard the dacoits enter the western house and break open a box, from which he subsequently found they had taken 213 rupees and some jewellery. Five or six of the number then burst open the door of the room in which he was sleeping, and entering it broke open a *pettarrah* and took out two or three bundles of clothes. They turned him round, but observing him to be ill, did not further ill-treat him. The neighbours now arriving, the dacoits made

their escape. The prosecutor heard, two or three days after that his relation, Mungazee, had gone in company with the chowkeedar, Mohomuddee (witness No.—), to the thannah, and given information of the dacoity, but had entirely mis-stated the circumstances attending it, in consequence of not having enquired from him what those really were. He added that his servant, Sooltan Dhalee (witness No. 84), had informed him that he thought he had recognized Mohabullah (prisoner No. 9), Razye Dye, Pokye (No. 8), and Mohomuddee. Alee Mahomed (witness No. 83) informed the prosecutor that he only recognized Pokye (prisoner No. 8).

Alee Mahomed (witness No. 83) deposed, that while sleeping in the cutcherry, or outer-house, he and those sleeping by his side found themselves suddenly confined to the ground by rafters of the *sooparce* tree laid across their necks, breasts and ankles. The witness, Mungazee (No. 99), happening to be at the extremity of the line, managed to escape, but the rest being taken one by one from under the rafters, had their arms tied behind them. Three or four remained to watch the witness and his companions, and the rest proceeded to the interior of the homestead to complete their purpose. The neighbours being aroused, the dacoits made off, after breaking open the box and *pettarraah*. The witness stated that he recognized Dagun (prisoner No. 10), Mohabullah (No. 9), Moteeullah (No. 11), Zuhirooddin (No. 12), and Pokye (No. 8).

Sooltan Dhalee (witness No. 84) gave evidence to a similar effect, adding that he recognized Dagun (prisoner No. 10), Zuhiruddin (No. 12), and Mohabullah (No. 9), and had mentioned to the prosecutor that he did so the day after the occurrence.

Jageer Mahomed (witness No. 85) deposed to the same effect with the preceding witnesses, and stated that he recognized Dagun (prisoner No. 10), Mohabullah (No. 9), Zuhirooddin (No. 12), Moteeullah (No. 11), and Pokye (No. 8.) At the thannah, I observe, that he did not mention the prisoner Pokye (No. 8) at all, and identified the prisoner Moteeullah (No. 11) only after seeing him.

The witness, Jhola Gazee (No. 92), stated that he recognized the prisoner Pokye (No. 8), Dagun (No. 10), and Mohabullah (No. 9); at the thannah and before the magistrate he stated that he recognized Zuhirooddin (prisoner No. 12) also, but omitted mention of him before the sessions court, and stated that he had also not named him elsewhere. He added that he had mentioned the names of the three prisoners, Pokye (No. 8), Mohabullah (No. 9), and Dagun (No. 10), to the prosecutor the next day, but of this the prosecutor made no mention.

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The witness, Asrub (No. 93), recognized Pokye (prisoner No. 8), Mohabullah (No. 9), and Dagun (No. 10.)

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Mungzee (witness No. 99) deposed, that he was aroused, on the night in question, while sleeping in the prosecutor's outer-house by the side of the witness, Sooltan Dhalee (No. 84), who called to him to look out and see what was taking place. The witness replied, that no doubt dacoits were coming, and telling Sooltan Dhalee to wake the rest, leapt out of the house and gave the alarm. After the dacoits had escaped, the witness, instead of returning to the prosecutor's house, went home to sleep. On the following day he was on his way to visit the prosecutor, when he saw the witness, Mohomuddee, chowkeedar, issue from the house, who told him that he had just seen the prosecutor, who was so ill as to be unable to answer except by signs, which he had done in the negative, when asked as to whether the dacoits had carried off any property, and had in the same manner signified his wish, that Mungazee, the deponent, should accompany the chowkeedar to give information to that effect at the thannah ; Mungazee wishing first to consult the prosecutor, the chowkeedar observed that being unable to speak to *him*, he could obviously speak to no one else. The witness accordingly accompanied the chowkeedar to the thannah and gave information of the dacoity, stating that no property had been plundered. Subsequently he heard that he had been misinformed by the chowkeedar.

The witness, Munglie Khan (No. 94), was one of the neighbours who hastened to the prosecutor's house when the alarm was given, and found his servants bound in the outer-house. He assisted in releasing them, and heard from the witnesses Asrub (No. 93) and Alee Mahomed (No. 83), on the following day, that they had recognized the prisoners, Pokye (No. 8) and Dagun (No. 10.) Before the magistrate he added that they also recognized the prisoner Mohabullah (No. 9.)

The witness, Musst. Moyrumic (No. 98), who is the wife of the prisoner Dagun (No. 10), and who deposed before the magistrate, that after consulting one day with the prisoners, Pokye (No. 8), Mohabullah (No. 9), Motceullah (No. 11), and Zuhiruddin (No. 12), he left the house with them and remained out all night, stated before the sessions court, that the four prisoners had indeed visited her husband, the prisoner Dagun (No. 10), but that there had been no consultation between them ; they had merely smoked tobacco, and then left the house, unaccompanied by her husband, who was at home during the entire night. This, however, is opposed to her evidence before the magistrate.

The only witness remaining, to whose evidence it is necessary to advert, is Mohomuddec, chowkeedar, whom I called for, conceiving it necessary he should be examined, to elucidate the point of the first information given at the thannah being so opposed to the prosecutor's statement. He deposed to hearing of the dacoity and to proceeding in search of the dacoits, but without success. On the following day he went to the prosecutor's house, when the prosecutor informed him that a dacoity had in fact taken place, but without loss of property. The witness proceeded to give information accordingly at the thannah accompanied, at the prosecutors desire, by the witness Mungaze.

The prisoner Pookiah *alias* Pokye (No. 8,) confessed at the thannah to the following effect :—

The prisoners, Zuhirooddin (No. 12), Dagun (No. 10), Mohabullah (No. 9), with several others, met at the house of the prisoner, Moteeullah (No. 11), and agreed to commit a dacoity on the prosecutor's premises. The prisoner, Pookiah (No. 8) residing in the prisoner Moteeullah's (No. 11) house was asked to join them. The prisoners Moteeullah (No. 11), Dagun (No. 10), and Zuhirooddin (No. 12), took swords with them, and the rest long and heavy *lattees*, and the band had six or seven torches. Thus armed and prepared, they attacked the prosecutor's house, and bound the four persons, whom they found sleeping in the outer-house. Some of the number then entered the inner-house, broke open a box and a *pettarrah*, and possessed themselves of a lotah containing about 200 rupees, a box containing silver ornaments, and some bundles of clothes. They then beat the women and threatened to burn them with the torches, if they did not point out more property. They then left, and when the spoil was divided, 5 rupees and a piece of cloth fell to the prisoner's share. The cash he left in charge of the prisoner Moteeullah (No. 11), but retained the cloth himself. No disguise beyond wearing soiled clothes was attempted.

Before the magistrate, the same prisoner made a very similar confession, but endeavored to show that his joining in the dacoity was in a degree compulsory. In all material respects the confessions agree.

Before the sessions court, this prisoner stated that his confession was extorted from him by ill-treatment at the thannah, and before the magistrate the result of previous persuasion by the darogah and mohurrir. He now states that he committed no dacoity, but had no evidence to furnish in support of his innocence.

The remaining prisoners denied all participation in the dacoity, and pleaded *alibi*.

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I proceed to notice some of the many inconsistencies and contradictions apparent in this case.

The prosecutor's son-in-law, Mungazee, accompanied by the village chowkeedar, reported to the darogah on the 5th of Cheyt, that a body of dacoits were "about" to commit a dacoity, when they were prevented by an alarm being given; that no property had been carried off; none of the dacoits recognized, and that the prosecutor desired no investigation.

On the 14th of Cheyt, that is to say, on the ninth day after this report had been made, the prosecutor himself appeared at the thannah with an entirely different story. He said that the dacoity had been fully perpetrated, property exceeding 300 rupees in value carried off, and several of the dacoits recognized by his servants. Illness was his excuse for not giving intelligence to the above effect before. And Mungazee and the chowkeedar had given the incorrect information they did, without his order.

The prosecutor stated at the thannah, that his servant, Sooltan Dhalec, had recognized Mohomuddee, Pokye (No. 8), Razye Dye, and Mohabullah (No. 9), among the dacoits, and mentioned no other of his servants as recognizing any of the gang. Before the magistrate and before the sessions court, he stated that his servant said he believed he had seen the four individuals he had named. While again before the sessions court, he added that his servant, Alee Mahomed, had also recognized Pokye, (prisoner No. 8).

At the thannah Sooltan Dhalee himself deposed, that he had recognised Dagun (prisoner No. 10), Zuhirooddin (No. 12) and Mohabullah (No. 9), and no one else, which is quite opposed to his master's statement.

The prosecutor's servant, Alee Mahomed, who, his master said, recognized Pokye (prisoner No. 8) only, deposed at the thannah that he had recognized among the dacoits, Dagun (prisoner No. 10), Mohabullah (No. 9), Motecullah (No. 11), Zuhirooddin (No. 12), and Pokye (No. 8). He then further identified from their appearance three others—Dil Mahomed, Bhola Gazee and Shumai. Before the sessions court this witness limited his recognition to Zuhirooddin (No. 12), Moteeullah (No. 11), Pokye (No. 8) and Mohabullah (No. 9), adding that he had told the prosecutor, the day after the dacoity, that these were the individuals he had identified.

The prosecutor's servant, Jogeer Mahomed, (whom his master had not named as able to point out any of the gang,) deposed at the thannah that he had recognized Mohabullah (No. 9), Dagun (No. 10), and Zuhirooddin (No. 12), and he also identified Motecullah (No. 11), Dil Mahomed Shumai,

and Bhola Gazec, on seeing them. In contradiction to this statement, he deposed before the sessions court that he had recognized Motecullah (No. 11), Mohabullah (No. 9), Zuhirooddin (No. 12), Dagun (No. 10), and Pokye (No. 8), and no one else. Pokye (No. 8) he neither named nor identified at the thannah, although he had been apprehended and confessed. He added before the sessions court, that he had named those whom he had recognized among the dacoits to the prosecutor, the day after the dacoity. Had he done so, the prosecutor, would certainly have mentioned him as well as Sooltan Dhalee, as one who had recognized some of the dacoits.

The witness, Jhola Gazee (No. 92), deposed at the thannah, that hearing Mungazee call for help (*duhae*), he concealed himself in a betel-nut garden near the prosecutor's house and recognized Dagun (No. 10), Zuhirooddin (No. 12), Mohabullah (No. 9), and Pokye (No. 8), quitting the prosecutor's house. Before the sessions court he deposed that calling out to the prosecutor to know what was the matter, the dacoits ran up to assault him, when he recognized Dagun (No. 10), Mohabullah (No. 9), and Pokye (No. 8). When asked why he omitted Zuhirooddin's (No. 12) name, whom he had stated before the magistrate and darogah to be one of the dacoits he had recognized, he stated that he had on no occasion mentioned having seen Zuhirooddin (No. 12).

The witness, Asrub (No. 93), who, Jhola Gazee stated, was hidden with him in the betel-nut grove, deposed at the thannah that he recognized Dagun (No. 10), Mohabullah (No. 9), and Pokye (No. 8), when quitting the prosecutor's premises with the other dacoits. Before the sessions court he stated, that having called out to the prosecutor's servant, Sooltan Dhalee, to know what was occurring, the prisoners, Pokye (No. 8), Dagun (No. 10), and Mohabullah (No. 9), rushed threateningly towards him, and he had then recognized them.

The witnesses, Sooltan Dhalee (No. 84), and Alee Mahomed (No. 83), deposed that Mungazee (witness No. 99) was confined under the same *sooparee* rafters with themselves, and subsequently escaped. Mungazee himself deposed, that Sooltan Dhalee, hearing the noise caused by the dacoits approaching the outer hut or cutcherry, had awakened him, and that he had forthwith leapt out and made his escape.

The prosecutor stated, both at the thannah and before the magistrate, that he had been informed by Sooltan Dhalee and Alee Mahomed of the names of the individuals they had recognized, five or seven days after the dacoity. All the witnesses, on the contrary, who deposed to having recognized any of the

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dacoits, say that they mentioned their names to the prosecutor the day after it took place.

Before the magistrate the prosecutor said that the female members of the family, and the villagers, ascertained the amount of his loss the same night. Before the sessions court he stated, that the villagers went away immediately in consequence of his illness, and that he ascertained what the dacoits had carried off after somewhat recovering from his illness. When asked which statement was correct, he adhered to that made before the magistrate, but his servant, Alee Mahomed, here contradicted him by deposing, that no enquiry was made on the night of the dacoity on this point, nor did he hear any thing about it until the prosecutor had become somewhat better.

Sooltan Dhalce deposed before the magistrate, that he had seen the broken open box and *pettarrah*, and ascertained that their contents had been carried off on the night of the dacoity. Before the sessions court he stated that he heard from the prosecutor six or seven days after the dacoity, that his property had been carried off. When asked regarding this discrepancy, he adhered to his statement before the magistrate.

It is to be remarked, that while the witnesses depose that the dacoits made their escape immediately on the arrival of the villagers summoned by the prosecutor's son-in-law, Mungazee, they are described to have been occupied in the work of pillage two ghurrees, or about three quarters of an hour. Now Mungazee escaped, according to his own statement and that of those sleeping with him in the cutcherry, immediately on the dacoits arriving. The neighbours live close to the prosecutor, at one, two, or three kances distance, and it is impossible to reconcile the immediate alarm given by Mungazee with the time the dacoits were occupied pillaging the premises.

The discrepancy between the statement of Mungazee and the chowkeedar, Mohomuddee, as to the circumstances under which they reported that a dacoity had been attempted, but not effected, is also worthy of notice. I am doubtful whether it was not the true version of the occurrence, as it seems very improbable that the village chowkeedar and relation of the prosecutor, actually sleeping on the premises, should be so ignorant of the real character of the occurrence, as this deposition would make them appear to be.

The confession of the prisoner, Pokye (No. 8,) does not, in my opinion, carry with it sufficient weight to justify its being received against those he names, as forming part of the gang. For instance, the prosecutor and his witnesses are unanimous in stating the dacoits had only *lattees* and rafters of the *sooparee* tree, such as are used for meehangs. The

prisoner Pokye (No. 8), in his confession before the magistrate, states that some of the dacoits had swords, a circumstance not likely to escape the notice of all the witnesses, or for them to omit to mention, if it really occurred. Again, he speaks of the women being ill-treated and threatened also, a circumstance not likely to be forgotten by the prosecutor and his witnesses.

My opinion is, that the prisoners, Mohabullah (No. 9), Dagun (No. 10), Moteeul'ah (No. 11), and Zuhirooddin (No. 12), have not been satisfactorily identified as parties to the dacoity. No single article of the property, said to be stolen, was found in their possession, and their alleged recognition by the witnesses is replete with contradictions. Had the prosecutor's servants really recognized the dacoits, or any of them, on the night of the occurrence, they must have felt that early naming them to the police afforded the sole chance of tracing and recovering the stolen property.

It is not probable that with such a clue, available for so desirable a purpose, they would have allowed it to be lost by not mentioning the names until many days had elapsed, and the chance of recovering the property wholly vanished. The confession of Pokye (No. 8) was recorded thirteen days after the dacoity took place, and, in my opinion, cannot be accepted as evidence against those he names. Being good, however, against himself, I sentenced him as shewn in column 12.

I observe that the magistrate has duly noticed the unwar-rantable time the prisoners were kept at the thannah.

Sentence of the lower court.—Imprisonment with labor in irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I see no reason to distrust the confessions, which are duly verified, and confirm the sentence.

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Case of

POOKIAH

alias POKYE.

PRESENT :
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

BOODHOO SHEIKH.

RAJSHAHYE.

—
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Case of
Boodhoo
Sheikh.

Prisoner
convicted of
perjury and
sentenced to
three years'
imprisonment.
Appeal reject-
ed.

CRIME CHARGED.—1st count, perjury, in having, on the 1st October 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the moonsiff of Pubnah, that he saw Allabiddy Kareegur, Tanger Kareegur, and Momeen Kareegur, on the 10th or 11th of April 1852, assault the prosecutor, Zumeer Kareegur; and in having on the 15th January 1853, again intentionally and deliberately deposed, under solemn declaration taken instead of an oath, before the moonsiff of Pubnah, (Allabiddy Kareegur, Tanger Kareegur, and Momeen Kareegur being then and there present,) to the effect that he did not see Allabiddy Kareegur, Tanger Kareegur, and Momeen Kareegur assault Zumeer Kareegur on the 10th or 11th of April 1852; such statement being contradictory of each other on a point material to the issue of the case; and 2nd count, perjury, in having on the 15th January 1853, deposed, under a solemn declaration taken instead of an oath, before the moonsiff of Pubnah, (Allabiddy Kareegur, Tanger Kareegur, and Momeen Kareegur being then and there present,) that he did not mention their (Allabiddy's, Tanger's and Momeen's) names as those concerned in the assault, when he gave his deposition before the moonsiff of Pubnah on the 1st October 1852.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. F. L. Beaufort, officiating joint-magistrate of Pubnah.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 30th April 1853.

Remarks by the sessions judge.—The charge again explains the case, and it being fully proved that the prisoner made the contradictory statements before the moonsiff, and the law officer convicting him of perjury, I have, concurring in the *futwa*, sentenced him to three (3) years' imprisonment, without labor or irons, on account of his age.

The complaint was lodged on the 15th September 1852, the defendant attended on the 17th October, and the case was dismissed on the 17th January 1853, or three months after the defendant put in possession and appearance, as is usual in almost all petty cases at Pubnah. The witnesses to the charge are invariably first summoned, and thus have

generally twice to attend, and give their depositions, and to point out the parties they name.

Sentence passed by the lower court.—Three (3) years' imprisonment without labor or irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The depositions of the prisoner, in October 1852 and January 1853, before the moonsiff, are verified by the writer, Omanath Chukerbutty, and by another witness, Fattoo, a peadah of the court, as is the identity of the prisoner.

It was not till Alluboodeen and the others, charged with assault on Zumeer Kareegur were apprehended in 1853, and brought into court, that the prisoner denied having seen them in the act, to which he had distinctly sworn in 1852.

The prisoner in appeal pleads his identity is not proved.

I see no reason to interfere with the sessions judge's sentence.

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Case of
BOODHOO
SHEIKH.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

BHALOO BUSHTOMEE AND GOVERNMENT

versus

HARAN BANICK, APPELLANT, AND GOLAPEE TANTINEE.

CRIME CHARGED.—With burning both the private and also other parts of the person of the infant daughter of the prosecutrix, Bhaloo Bushomee, with a hot iron *hata* (ladle), with intent to murder or do her some serious bodily injury.

CRIME ESTABLISHED.—Torture, by branding with a red hot iron the infant daughter of the prosecutrix, with intent to cause her some grievous bodily injury.

Committing Officer—Baboo Issur Chunder Ghosal, deputy magistrate of Santipore.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 4th June 1853.

Remarks by the officiating additional sessions judge.—This is a case of cruel, deliberate torture, and the victim an unoffending child of three years old. From the statement of the prosecutrix, it appears that a betrothal, or contract of marriage, had been concluded between the son of the male prisoner, Haran Banick, a boy of about nine years old, and her daughter, the subject of the outrage. Some time after the final arrangement of the matter, the prisoner Haran seems to have made overtures to the prosecutrix, to live and cohabit with him, which on her

NUDEEAH.

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Case of
HARAN
BANICK and
another.

Two prisoners, a man and his concubine, convicted of torture by branding a child with intent to cause it some grievous bodily injury, sentenced to seven years' imprisonment. Appeal rejected.

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Case of

HARAN
BANICK AND
another.

declining, he removed his future daughter-in-law from the house and threatened to be revenged. Shortly subsequent to this event, intelligence was brought to the prosecutrix by one Gopal Das, that her child had been killed. She immediately repaired to the prisoner's house, as the most likely place to learn tidings of her child, but not finding her there, was running off to the thannah to lodge information of the rumour that had reached her, when she met a concourse of people carrying her daughter and dragging the prisoners to the police station. She took her child in her arms and accompanied the party to the thannah, where she produced her child and pointed out to the darogah several brands, or marks of recent burning exhibited on its person, in the secret as well as other parts. The evidence of two persons distinctly proves that the prisoner, Haran Banick, branded the prosecutrix's child, with a red hot iron ladle, on different parts of the body, while the prisoner Golapee Tantinee, his concubine, held her fast and gagged her with a piece of cloth to prevent her screaming. Both these witnesses reside in the same *bari*, or range of buildings, as the prisoners, and were attracted to the spot by the moans of the suffering child. They also state, that on being discovered, the male prisoner threw the implement of torture into the house and the female prisoner besmeared the child's body with clay, probably with the view both of allaying the irritation of the burns and causing them to assume as mild and insignificant a form as possible. The rest of the evidence for the prosecution goes to show, that the child was examined when brought before the darogah, and that her person exhibited blisters, apparently caused by the recent application of some heated metallic substance. These deponents also attest the record of the *soorthal*, which, however, has been informally drawn up, being engrossed on the last page of the prosecutrix's deposition, instead of a separate sheet of paper. The irregularity has been duly brought to the notice of the committing officer. Both the prisoners plead *not guilty* before this court, and cite witnesses to prove that they were in the bazar of the village at the time the crime alleged against them was perpetrated; but the evidence fails to establish the plea. The *futwa* convicts the prisoners of participating in an equal degree in the crime of torture, by branding with a red hot iron ladle, and I concur in the finding.

Sentence passed by the lower court.—To be imprisoned for seven (7) years each; No. 1, with hard labor and irons, and No. 2 with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner has stated nothing in his defence in the appeal preferred to this court.

The facts detailed by the sessions judge are fully proved by the witnesses, and I see no reason for interfering with the sentence passed upon the prisoner.

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Case of
HARAN
BANICK and
another.

PRESENT:

J. DUNBAR, Esq., *Judge*,

AND

H. T. RAIKES, Esq., *Officiating Judge*.

GOVERNMENT

versus

MUNGOO TALOOKDAR.

CRIME CHARGED.—Perjury, in having, on the 16th February 1843, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Jelalood-deen Mahomed, late principal sudder ameen of this zillah, that he had sold $2\frac{1}{2}$ pie his own share, and 10 cowries, received as remuneration, making in all 3 pie, in Kharija Talook, No. 365, in Pergunnah Cogmarree, to Golucknath Roy Chowdry; and in having, on the 3rd January 1853, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before Mr. A. Abercrombie, late joint-magistrate of this court, that he did not sell his share to Golucknath Roy Chowdry, such statements being contradictory to each other on a point material to the issue of the case.

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SINGH.

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Case of
MUNGOO
TALOOKDAR.
Prisoner
charged with
perjury ac-
quitted, the
evidence to his
having been
duly sworn
being defec-
tive.

Committing Officer—Mr. C. E. Lance, assistant, exercising the powers of joint-magistrate, at Jumalpore.

Tried before Mr. W. Trotter, officiating sessions judge of Mymensingh, on the 30th July 1853.

Remarks by the officiating sessions judge.—From the proceedings of commitment and trial it appears, that the prisoner lodged a complaint before the assistant-magistrate in charge of the sub-division of Jumalpore, against witness No. 1 and others, for forcibly cutting and carrying away *dhan* from some lands appertaining to his 3 pie share of talook, No. 365.; and when giving his deposition on solemn affirmation before that officer, he was questioned by witness No. 1, if he had sold his share to Golucknath Roy Chowdry, to which he replied that he had not. The witness then reported that the prisoner in his deposition in another case, which was made over to a former principal sudder ameen, for trial in his capacity of an assistant to the magistrate, solemnly declared that he sold his share to the zemindar, which he now denies.

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 Case of
 MUNGOO
 TALOOKDAR.

Witness No. 2, the writer of the deposition in the principal sudder ameen's court, however, deposed before the assistant-magistrate that he did not recognize the prisoner, nor could he distinctly state if the prisoner was duly sworn when his deposition was taken, though he supposes he was, as he (witness) remembers that a peadah and a mullah were employed in that court to administer the prescribed oath. In this court the witness declares that he remembers having taken the prisoner's deposition some eight or nine years ago, but cannot say if he (the prisoner) was duly sworn. He supposes he was, and that it was the practice in that court, for the principal sudder ameen, to sign depositions immediately on their being recorded by the mohurrir, and at a later period of the day they were read over to him, but the witness could not say if the prisoner was called upon by that officer to attest before him, on solemn affirmation, the deposition recorded by him (the witness), but supposes such was the case.

Witness No. 3, Doorgachurn Chukerbutty, states that he recorded that part of the prisoner's deposition of the 3rd January last, before the assistant-magistrate, exercising the powers of joint-magistrate at Jumalpore, in which he denied the sale of his share in the talook to the zemindar, (the former part of his evidence having been taken by another mohurrir,) but does not remember whether the oath was duly administered or not.

The prisoner, before the assistant-magistrate and in this court, denied, the charge, urging enmity with witness No. 1, and stating, that if he sold his share to the zemindar, he would certainly have taken possession of it.

The law officer, although he doubts the evidence for the prosecution, would convict on the ground, that the prisoner's witnesses did not exculpate him from the charge, in which I entirely dissent. It will be observed that the prisoner is first alleged to have stated, in the year 1843, before the principal sudder ameen, that he sold his share in the talook to the zemindar, while before the joint magistrate he denied having done so, but from the evidence of witness No. 2, it appears a matter of great doubt, whether the oath was administered in the presence of the principal sudder ameen or not, and it would be hard to convict a man of perjury for contradiction, after eight or ten years have elapsed between the two depositions, especially when the evidence for the prosecution has failed, and still more so to punish a man according to the terms of the *futwa*, merely because his witnesses did not exculpate him. I therefore beg to recommend that the prisoner be acquitted.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Baikes.)—There is no actual proof that either the one or the other of the depositions, made by the prisoner and upon which the perjury is charged, was taken upon oath, but as the first deposition purports to have been so taken, in absence of proof to the contrary, it should have been at once so received. The presumption is, however, that that part of the deposition, of the 3rd January 1853, on which the contradiction is assigned, was not made upon oath ; it is upon a separate paper, headed as a supplemental deposition of Mungoo, talookdar, and was not written by the mohurrir who took down the first portion of the deposition. As no less than three mohurrirs had a hand in that deposition, there must evidently have been an interval between the writing of each portion ; and if so, the deponent should have been sworn to each separate deposition, but the mohurrir cannot say whether he was so sworn or not ; and the record itself contains no declaration to that effect. The *futwa* of the law officer is inconsistent and unsatisfactory. We acquit the prisoner and direct his release.

1853.

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Case of
MUNGOO
TALOOKDAR.

PRESENT :
J. R. COLVIN, Esq., Judge,
AND
H. T. RAIKES, Esq., Officiating Judge.

GOVERNMENT

versus

KRISHNOMOHUN BOSE (No. 1), LALL MOHUM-MUD DHALEE (No. 2), KADIB DHALEE (No. 3), BEESHOO DHALEE (No. 4), KHUTEEB SHAIKH (No. 5), LOOTAAE CHOWKEEDAR (No. 6), ESHAN-CHUNDER MITTER (No. 7), KEENOO CHOWKEEDAR (No. 8), NYAMUT SHAIKH (No. 9), NOBO GAZEE (No. 10), KHADOO GAZEE (No. 11), OKHEEL GOLDAR (No. 12), SABIR SHAMMA (No. 13), BHOMAR SURDAR (No. 16), GREEDHUR JALIAH (No. 17), AND BEESHOO JALIAH (No. 18).

24-PERGUNNAHS.

1853.

August 20.

Case of
KRISHNO-
MOHUN BOSE
and others.

Eight prisoners convicted as principals and accomplices in a riotous and forcible assault with murder and robbery. One sentenced capitally, three transportation for life, and the remainder imprisoned in banishment for sixteen years.

CRIME CHARGED.—1st count, Nos. 1 to 4, wilful murder of Hurrochunder Sen ; 2nd count, Nos. 1 to 13 and from 16 to 18, with being accomplices to the said murder ; 3rd count, Nos. 1 to 13 and from 16 to 18, with dacoity in the house of Hurrochunder Sen, attended with the severe wounding of the said Hurrochunder Sen, from the effects of which he subsequently died, and the plunder of property valued at company's rupees 167-4 annas ; 4th count, Nos. 1 to 13 and from 16 to 18, with being accomplices to the said crime of dacoity ; 5th count, Nos. 1, 2 and 5 to 7, with knowingly receiving and possessing property obtained by the above dacoity ; 6th count, Nos. 2, 5, 6, 8 and 9, with being accessories after the fact, and 7th count, No. 6, further, with having committed the above crime, whilst a village chowkeedar in the service of Government.

Committing Officer—Moulvee Abdool Luteef, deputy magistrate of Kalaroa, exercising the full powers of a magistrate in zillah Baraset.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 1st July 1853.

Remarks by the officiating additional sessions judge.—The prisoners, 18 in number, were committed on the charges marginally enumerated, and plead *not guilty*.

The three first witnesses for the prosecution have evidently been tampered with by the prisoners and trimmed to their party, and by withholding the knowledge in their possession, frustrated the ends of justice and compromised the fairness of the trial by qualifying the evidence against the accused. As in so doing they have intentionally and deliberately made

tradictory statements under solemn declaration before this court and the magistrate's, on a point material to the case, I have set aside their evidence and directed their committal for perjury.

The evidence, of the witnesses Nos. 4, 5, 6, 8, 9, 10, 11, and 46, proves the complicity of all the prisoners, except two, and especially points to the prisoners, Krishnomohun Bose, Lall Mohummud Dhalee, Kadir Dhalee and Beeshoo Dhalee as the persons who ordered the attack and perpetrated the fatal wounding and assault. As the moon was shining brightly, and there was a large blaze of torch-light, and the witnesses and prisoners being fellow village-men, were well known to each other, I am inclined to lay more stress on the recognition in the present instance than I usually do on such testimony.

The proof it offers is, in my opinion, conclusive against the four prisoners I have named, and generally affects the rest, though not so specially perhaps as it might. It refers to the latter as those who participated in the dacoity and plunder.

The witnesses, Nos. 50, 51 and 49, prove the last and only declaration made by the deceased Hurchunder Sen. The first two are the darogah and mohurrir, and the latter a near relative. The former, in his official capacity, examined the deceased, and the mohurrir recorded the statement he made; and the latter was present as nearest of kin and carefully noted every word that was said. The purport of the declaration was that the prisoner, Krishnomohun, ordered the deceased to be seized as he was attempting to escape from the premises, in the words, "there he goes, lay hold of him," and the prisoner, Lall Mohummud Dhalee, wounded him in the breast and several parts of the body with a spear, by Krishnomohun's orders, while the other two prisoners beat him with clubs. The deceased is represented as being in a very weak state and apprehensive of approaching dissolution, while giving this testimony, and the circumstance almost entitles the deposition to the consideration of a dying declaration.

The evidence, of the witnesses, Nos. 31 and 33, proves the finding of a *thali* and *lota* in the house of the prisoner, Krishnomohun Bose; but I am not disposed to place much reliance on the testimony, as there is some slight discordance between the two details as to the finding of the property, and think it improbable that the prisoner committed the theft; his individual object being, as I shall endeavor to show hereafter, either to murder the deceased, or do him some grievous bodily injury.

The witnesses, Nos. 34, 35, 36 and 37, prove that a *kulsi*, or water-pot, was discovered in the house of the prisoner, Lall

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Case of
KRISHNO-
MOHUN BOSE
and others.

1853.

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Mohummud Dhalee, and alleged to be part of the plundered property. This vessel appears to have been given to him by his master and employer, the prisoner Krishnomohun Bose, on completion of the affair, doubtless for service rendered on the occasion.

Two witnesses, Nos. 5 and 38, state that the mother of the prisoner, Khuteeb Shaikh, produced from her house a coverlet, which she said her son had received as his share of the plunder.

The witnesses, Nos. 41, 42 and 53, prove that the prisoner, Lootae, chowkeedar, produced from under-ground the following articles of the stolen property :—a *rikabi*, two *kutoras* and two *lotas*. This finding is credibly supported, and has all the appearance of a *bond fide* recovery. It is moreover corroborated by the confessions of the prisoner, both before the police and the deputy magistrate.

The witnesses, Nos. 43, 44 and 45, prove the finding of a *rikabi*, two *kutoras*, a *thali* and two *lotas*, identified as part of the plundered property in the house of the prisoner, Eshan-chunder Mitter. The articles were found locked up in a chest, the key of which was kept by the prisoner's mother, who gave it up on requisition. She is said to have been quite silent on the discovery of the articles.

The witnesses, from Nos. 15 to 22 inclusive, prove the most-fussil confessions of the prisoners, Lall Mohummud Dhalee, Khuteeb Shaikh, Lootae, chowkeedar, Keenoo, chowkeedar and Niamut Shaikh. These confessions are credibly upheld and corroborated by the certificate and attestation of the police officers, the witnesses, Nos. 50 and 51, before whom they were made, the former, the darogah who interrogated the prisoners, and the latter, the mohurrir, who recorded their statements. I have no doubt of the truth of these confessions.

The witnesses, Nos. 24, 25, 27, 28 and 30, attest and prove the foudjaree confessions of the same five prisoners. The confessions for the most part agree, and are generally consistent throughout. They emphatically disclose the complicity of the prisoners.

The evidence of the sub-assistant surgeon, (witness No. 14,) who examined the body of the deceased, Hurchunder Sen, goes to show that death was caused by a punctured wound in the chest, penetrating to and injuring the lungs, and that such wound was inflicted by a sharp-pointed instrument.

I would here briefly revert to the testimony of the witness No. 49, Omachurn Ghose, who explains the grounds of the ill-will and animosity entertained by the prisoner, Krishnomohun Bose, and his party against the deceased. This detail goes far to satisfy my mind, that the outrage under contemplation was planned and executed by that individual, and that

plunder was less his individual object than the desire to injure materially, if not to kill, his opponent and enemy. The gift of the brass water-pot, *kulsi*, to his creature, the prisoner, Lall Mohummud Dhalee, on the completion of the affair,—a fact admitted by Lall Mohummud in his confessions,—looks very like a reward for hireling service. This witness also identifies the recovered property, the formal recognition of which has been obstructed by the failure of the evidence of the witnesses, Nos. 1, 2 and 3, above made mention of. These parties, however, identified the articles before the magistrate, and there is every reason to believe that that identity was genuine, particularly as the prisoners with whom it was respectively found, fail to prove their claim to it.

The witnesses, Nos. 47 and 48, depose that they recognized the prisoner, Lootae, chowkeedar, immediately after the occurrence, with a pistol or sword-stick in his hand. He ran close by them and addressed them as he passed.

The prisoners, one and all, with exception to the prisoner Khuteeb Shaikh, declare themselves the victims of malice and enmity. Their special plea is *alibi*, in proof of which they call witnesses. The prisoner, Khuteeb denies the charges, repudiates his confessions and claims the property found in his house, but cites no witnesses to defence.

The witnesses, from Nos. 53 to 88 inclusive, were examined on behalf of the prisoners, but in no instance do they prove the plea set up either as regards property or presence.

The *futwa* of the law officer convicts all the prisoners, with exception to the prisoners, Subul, Joge and Rufi Mohummud, of being accomplices in a tumultuous attack and plunder, in which Hurchunder Sen received a spear wound, from the effects of which he died, and declares them liable to *akoobut*. It acquits the prisoners, Subul, Joge and Rufi Mohummud for want of proof.

I concur in the conviction of the prisoners, Krishnomohun Bose, Lall Mohummud Dhalee, Kadir Dhalee, Beeshno Dhalee, Khuteeb Shaikh, Lootace, chowkeedar, Eshanchunder Mitter, Keenoo, chowkeedar, and Niamut Shaikh, but not in the finding, and dissent with the verdict as regards all the other prisoners, except Subul, Joge and Rufi Mohummud.

There is, to my mind, abundant evidence in the records of this case, to show that the deceased, Hurchunder Sen, was obnoxious to the prisoner, Krishnomohun Bose and his party, on account of disputes regarding landed property and the rents accruing thereon, and that the latter could not prevail against the former. That strong feelings of animosity were gendered in the mind of Krishnomohun, at his unsuccessful attempts to crush his opponent, may equally be inferred by the papers, and it is far from improbable, under such circumstances, that he

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should have adopted the expedient of attacking his person and plundering his property for the purposes of revenge. In this view of the case, I can easily believe that he hired miscreants to effect both purposes. The former was clearly brought about by himself and the prisoners, Lall Mohummud, Kadir and Beeshoo, his creatures and adherents, and the latter by the prisoners generally, though the evidence, in my estimation, affects the others only in the persons, of the prisoners, Khuteeb, Lootae, Ishan, Keenoo and Niāmut.

As the instigator of the affair, in all its ramifications of murder and dacoity, and the perpetrator of, and accomplices in, the fatal attack on the deceased, Hurchunder Sen, I would sentence the prisoners, Krishnomohun Bose, Lall Mohummud Dhalee, Kadir Dhalee and Beeshoo Dhalee to transportation for life. I convict the prisoners, Khuteeb Shaikh, Lootae, chowkeedar, Eshanchunder Mitter, Keenoo, chowkeedar and Niāmut Shaikh of dacoity and plunder, attended with mortal wounding, and would recommend that they be imprisoned for fourteen (14) years with labor in irons in banishment, and two (2) years more in lieu of corporal punishment, in all sixteen (16) years. I would acquit the other prisoners for want of legal proof, though I am far from thinking them innocent of the offences charged. The evidence warrants the gravest suspicion against them, and some of them may clearly be recognized as adherents of the prisoner Krishnomohun Bose's party, I concur in the verdict of *not guilty* as regards the prisoners, Subul, Joge and Rifi Mohummud, and have ordered their discharge.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and H. T. Raikes.)—The history and particulars of this heavy case are not clearly developed in the report of the sessions judge.

That officer refers to the evidence to recognition of the witnesses, Nos. 4, 5, 6, 8, 9, 10, 11 and 46, as, in his opinion "conclusive against the prisoners Nos. 1 to 4," and adds "that it generally affects the rest, though not so specially perhaps as it might." Upon this evidence, and with reference to a declaration "of the deceased, Hurchunder Sen, which he considers as almost entitled to the consideration of a dying declaration," to papers recorded as confessions by the prisoners, Nos. 2, 5, 6, 8, and 9, and to the finding of several articles of property, which he believes to have been part of the plunder carried off in the attack, he would convict the nine prisoners, from Nos. 1 to 9.

In tracing, however, the successive steps in the progress of the case, we find that the witnesses, Nos. 4, 5 and 6, are not to be received with the same credit as the other witnesses, and that there is one of the earliest witnesses named in the case, witness (No. 7,) whose evidence, standing on the magistrate's

record, is justly to be referred to, as having died before the trial was held, he could not then be examined. We find also that the paper alluded to as the declaration of Hurchunder Sen, and "almost entitled" to be received in evidence, is strictly to be regarded as evidence, having been taken on solemn affirmation, as the deposition of a prosecutor before the police darogah, and having been, after his death, formally placed on the record of the trial, and duly attested before the sessions judge, by the darogah and by the jemadar who wrote it.

The attack and wounding happened on the night of the 28th February last. Information was given to the police jemadar on the next day, March 1st, by Zahir, chowkeedar, witness No. 46. He then mentioned that he thought that he had recognised the prisoner, No. 2, by his voice, and he said also that he had been informed by a relative of the wounded man, Hurchunder Sen, (against whom the attack was directed,) that he, the relative,* had, among others, recognised the prisoners, Nos. 1 and 4. He noticed the witness No. 11, as among the neighbours who had come to the spot on the alarm being given, and the witness No. 10, as one of those who were present, attending to Hurchunder's wound. These witnesses, Nos. 10 and 11, are thus among the first persons who were indicated as having personal knowledge of the occurrence.

During the night of the 2nd March, towards the morning, the jemadar began to record the deposition of the wounded man, and it continued to be taken at intervals before him and before the darogah, who arrived on that morning, till about 1 p. m. of the 2nd. The purport of this deposition is not correctly stated in paragraph 5 of the judge's letter. The account there given of it is taken, not from the document itself, but from the recollection of the general effect of it, stated by the darogah and the jemadar on the trial. They, however, subsequently read, and distinctly attested, the document itself, as it had been originally drawn and signed by them. The important variation from the contents of the document is that paragraph 5 of the report states it as setting forth, "that the prisoner, (No. 2) Lall Mohummud Dhalee, wounded him (the dependent) in the breast and several parts of the body with a spear by Krishnomohun's (prisoner No. 1's,) orders." The deposition does not say this, but only that the original attacks, seizure and ill-treatment were by Krishnomohun's orders, and that, subsequently, on the prosecutor screaming out for help, the prisoner, No. 2, wounded him several times with a spear that he had in his hand.

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* This relative is the witness No. 1, Oodychunder Sen, who, with two others, made contrary statements on the trial, and has, with those two, been committed for perjury by the sessions judge.

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On the same day, the 2nd March, the darogah assembled the villagers for inquiry, and, on that date, besides the witnesses Nos. 1, 2 and 3, who have retracted their statements on the trial, the witnesses Nos. 7, 8, 9 and 11, came forward as able to speak to the facts. By the evidence then obtained, Nos. 1, 2, 3, 4, 8 and 9, omitting others whom it is unnecessary to note here, were directly implicated. The prisoners, Nos. 5 6 and 7, were not then mentioned.

On the 4th March, the prisoner, No. 8, arrived on the spot, where the darogah was conducting his inquiries, having been sent to the darogah on suspicion by the deputy magistrate, before whom he had, on the part of the prisoner, No. 1, presented a petition against Hurchunder Sen, of whose dangerous wounds, and of the first inquiries made in consequence, the deputy magistrate had then heard. To the darogah, the prisoner, No. 2, made a confession, implicating himself, and (with others) the prisoners, Nos. 2, 3, 4 and 7. This is the first mention of the name of the prisoner, No. 7.

On the 8th March, 6 days afterwards, the witnesses, Nos. 4, 5 and 6, are for the first time named and examined as neighbours, who had been eye-witnesses. Their statements, cannot, under such circumstances, command confidence.

The prisoner, No. 6, was first named to the darogah on the 18th March, as being the chowkeedar of the mohullah, in which the prisoner No. 1, and his family lived, and as having been recognised on the night of the attack, running fast with a gun or pistol-stick in his hand. Evidence to this recognition was taken, and on the 17th March, the prisoner, No. 6, was apprehended. He made statements, recorded as confessions, both before the darogah and the magistrate, in which, while he denied criminal complicity in the outrage, he stated that he had pursued one of the attacking party, and taken up some articles of property (which were found in his possession) for the purpose of giving them over to the police, though he did not do so. This qualified confession is not certainly a confession, such as the sessions judge has designated it, but the obviously false account of the manner in which the prisoner became possessed of the property, much corroborates, of course, the direct evidence against him.

The prisoner, No. 5, was sent for by the darogah, in order to trace his relative, the prisoner, No. 2, and, being there, he appears on the 17th March, to have made a confession of his guilt, and to have had a coverlet that he had received as his share of the spoil, delivered up by his mother. He repeated his confession before the magistrate.

With this view, then, of the manner in which evidence was gradually brought forward against each prisoner, putting aside

the depositions of the witnesses, Nos. 4, 5 and 6, as little to be relied on, taking as evidence the attested deposition before the darogah of the deceased, Hurchunder Sen, and the deposition of the witness, No. 7, of the calendar (who died previous to the trial,) before the magistrate, the depositions on the trial of the parties very early named as witnesses, namely, witnesses Nos. 8, 9, 10, 11 and 46 (who, excepting No. 10 only implicate the prisoner, No. 2, while No. 10 implicates prisoners Nos. 2, 3 and 4,) and the confessions, complete or evasive, of the prisoners, Nos. 2, 5, 6, 8 and 9, with their admissions as to property found with them, we are prepared to concur in the conviction of the prisoner, No. 1, Krishnomohun Bose, No. 2, Lall Mohummud Dhalee, No. 3, Kadir Dhalee, No. 4, Beeshoo Dhalee, No. 5, Khuteeb Shaikh, No. 6, Lootaee, chowkeedar, No. 8, Keenoo, chowkeedar and No. 9, Niamut Shaikh, as being concerned as principals and accomplices in the riotous and forcible assault with murder and robbery, which forms the subject of the charges.

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An act of such open audacity and gross violence calls for marked repression. The sessions judge has recommended no more severe sentence against any of the prisoners than transportation for life; but we do not think that the ends of public justice will be satisfied by any other than a capital sentence against the prisoner, No. 2, Lall Mohommud Dhalee, from whose reckless spear-thrusts Hurchunder Sen is proved to have died. We therefore sentence this prisoner, No. 2, Lall Mohummud Dhalee to death; the other three prisoners, who were most actively engaged, and of whom No. 1 was the author of the whole outrage, namely, No. 1, Krishnomohun Bose, No. 3, Kadir Dhalee and No. 4, Beeshoo Dhalee, to transportation for life; and the other prisoners, whom we convict, *viz.*, Nos. 5, 6, 8 and 9 to imprisonment in banishment with labor and irons for sixteen (16) years.

The evidence against the prisoner, No. 7, Eshanchunder Mitter, seems to us to be quite insufficient for conviction. He was not named in the deposition of the prosecutor, Hurchunder Sen, and, not being one of the mere minor dependants of the prisoner No. 1, Krishnomohun Bose, he is not at all likely to have been left unnoticed by the prosecutor, had he been really present. None of the most trustworthy direct witnesses, whom we have above named, gave evidence against him. He has made no confession, and the brass vessels, found in his house, are such as in themselves to cause no suspicion, while their identification, as having belonged to Hurchunder Sen, is by no means satisfactory. We therefore acquit this prisoner, No. 7.

We concur with the sessions judge in acquitting the other prisoners.

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We would impress on the sessions judge the importance of very carefully marking, in his examination and analysis of cases, and in his reports to this Court, the precise time and circumstances under which parties come forward as witnesses, and the origin and date of the charge, or ground of suspicion, which leads to the apprehension of each prisoner in trials before him.

PRESENT:
J. DUNBAR, Esq., Judge,
AND
H. T. RAIKES, Esq., *Officiating Judge.*

NIDHEERAM MOOCHEE AND GOVERNMENT
versus
SUMBHOO CHUNDER KANSAREE.

NUDDDEA.

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CRIME CHARGED.—Malicious and wilful murder of Hurromohun Bhattacharje.

Committing Officer—Baboo Issur Chunder Ghosaul, deputy magistrate of Santipore.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 21st July 1853.

Remarks by the sessions judge.—The *futwa* of the law officer of this court, declares the prisoner guilty of the crime of wilful murder and liable to capital punishment by *kissas*.

Although I am of opinion that the prisoner was the primary cause of the death of the deceased, by the severe wound he inflicted with a sharp, cutting and dangerous weapon, and though there are reasons for supposing that his intention was to commit murder, yet I think the fact of the wounded man surviving the attack made upon him for 64 days and then dying of lock-jaw, and the wounds inflicted by the prisoner not having been on any vital part, amounts, under the circumstances elicited on the trial, to “highly aggravated culpable homicide,” for which, I think, a sentence of imprisonment for life in transportation will satisfy the ends of justice.

I am of opinion that the deputy magistrate in charge of the sub-division of Santipore, was remiss in his duty in not having applied to the magistrate at the sunder station, to cause the deposition of the wounded man to be taken, as also a “sooruthal” of his wounds to be made, at the time he received intimation that the crime had been committed, and that the deceased had been conveyed to the hospital for medical treatment; also in not having directed his police to enquire into the case, and, if it

proved to be one of a serious nature, to take the usual steps for the arrest of the accused, and for forwarding the parties to him for investigation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.)—The prisoner had been abused by the deceased for not paying him a debt, and this appears to have rankled in his mind, and led him to make the attack on the deceased, in the manner described by the witnesses.

Death having ensued, the question is, whether the crime amounts to murder or not. On this point there is a difference of opinion between the sessions judge and the law officer.

Taking into consideration that the prisoner was at the time acting under some provocation, and did not at once direct his blows at any vital part of the body, we are induced to give him the benefit of the doubt this creates, as to any deliberate intention to take life; but the act was one of great atrocity, (the blows of the *dao* being continued, till assistance was afforded and the assailant forced to fly); and looking upon the crime as one only just removed from murder, while convicting the prisoner of highly aggravated culpable homicide, we cannot do less than sentence him, as recommended by the sessions judge, to imprisonment for life, with labor and irons, in the Allipore jail.

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PRESENT:

H. T. RAIKES, Esq., *Officiating Judge:*

NEELKUNT AND GOVERNMENT,

versus

MUSST. CHUMNEE.

CRIME CHARGED.—Theft of jewels valued at Rs. 3-12, from the person of a boy named Munnoo, with attempt to murder him by throwing him down a well.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna. Tried before Mr. B. J. Colvin, officiating commissioner of Patna, with powers of a sessions judge, on the 12th August 1853.

Remarks by the officiating commissioner.—The circumstances of the case are as follows:—Witness No. 1 was, on the evening of Sunday, the 10th July last, watching his crops, when he heard the cries of a child proceeding from a well about two *russées* off. He went to it and, seeing a boy at the bottom, called out for assistance; at the same time he saw a woman running away, whom, at the time, he did not recognise. Witnesses Nos. 2 and 4 came up and the boy was taken out by a rope, which was lowered down for him to take hold of. He is a small child, 8 years of age, and has been at school, but I have

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a well and sen-
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not examined him, as he is too young to be sworn. His story to the above three witnesses was, that the prisoner had thrown him into the well after taking his bracelets from his arms. The prisoner lives in the same village, and it is proved that the boy knew her well. She was searched for immediately, and found in the village-bazar, when, before witnesses, Nos. 1, 2, 3, 4 and 5, she gave up one bracelet, saying the other had fallen somewhere.

There was fortunately not much water in the well at the time. The boy told the witnesses that it came up to his chest, but the well was deep.

The prisoner is proved to have acknowledged at the thannah, that she found the bracelet which she gave up, at the edge of the well from which the boy was taken out.

Before the magistrate, she accused Boodhia Casin of having thrown the boy down, and said that she had taken the bracelet from her : she makes the same statement in this court.

The names of three witnesses to her defence were put down in the calendar, but she has declined to have them examined.

The law officer finds the theft, with attempt to murder by throwing into a well, established on violent presumption, and declares the prisoner liable to "*acoobut shudeed*." In this finding I concur, and submit the case for the Court's orders, as one beyond my powers to dispose of according to Clause 4 Section VIII. Regulation XVII. of 1817. I recommend that, under all the circumstances of the case, the prisoner be sentenced to imprisonment, with labor suitable to her sex, for fourteen years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Baikes.)—I concur with the sessions judge in convicting the prisoner of theft with attempt to murder, by throwing the boy, Munnoo, into a well, and, as proposed by the sessions judge, sentence her to imprisonment for thirteen years with labor suited to her sex.

PRESENT :

J. DUNBAR, Esq., *Judge,*

AND

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND JOYMONEE DIOBANEE,

versus

PITAMBER DASS SEWLEE.

CRIME CHARGED.—Charge I., wilful murder of Manick Dhoba, husband of the prosecutrix—Charge II., 1st count, theft of property, value Rs. 9-8, attended with, but after, the wilful murder of Manick Dhoba, husband of the prosecutrix ; 2nd count, having taken portions of the said stolen property, knowing them to have been acquired by theft attended with, but after, the wilful murder of Manick Dhoba and placed them under false pretences in the house of Tarachand Bera, resident of village Bhowanipore.

Committing Officer.—Mr. E. Jenkins, magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on 26th July 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with wilful murder, theft, and having in possession stolen property, knowing it to have been acquired by plunder, and pleads *not guilty*.

The prosecutrix states, that she and her husband, the deceased, retired to rest, and on waking about 2 a. m., she missed him ; that she made search about the adjoining houses, but did not find him ; that the following morning she discovered his body with the throat cut, and the lower extremities devoured by some carnivorous animals ; that she accompanied the phareedar and chowkeedar to the thannah, for the purpose of laying her information, but was unable to do so in a connected form from distress of mind, and the stunning effects of her horrible calamity ; that after the lapse of three days she became more composed, and remembering that the prisoner had robbed the witness, Munjeree Bewa, and deposited the stolen articles in her house, unknown to her husband, and that she, prosecutrix, had restored her lost property to the said Munjeree, on her requisition, communicated the facts to the darogah, and on them founded her suspicions against the prisoner, and that the prisoner was accordingly arrested. She adds, that when these events took place, the prisoner temporarily resided in a small cabin adjoining her house, in pursuit of his vocation of *sewlee* (date-tree juice extractor), and after murdering her husband, robbed her of 2 brass plates, 2 coverlets, and a set of mosquito

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curtains, which he subsequently produced from the place where he had deposited them.

This is in substance the statement made by the prosecutrix, but she is a very aged and infirm person, and seems scarcely yet to have recovered from the shock of her late misfortune. She is moreover extremely deaf, and it was with great difficulty she could be got to answer the questions put to her. All things considered, therefore, her depositions before the magistrate and this court are strongly consistent.

The first witness examined for the prosecution was the police darogah, who investigated the case, and gives a very detailed and clear account of the affair, from the time of its coming to his knowledge up to the period of his forwarding the case and subjects to the magistrate. The substance of his statement is, that on receiving the intelligence of the murder and theft from the prosecutrix, he repaired to the spot where the body was lying, and found it with the head nearly severed from the trunk, and the lower extremities devoured by the dogs and jackals. Perceiving a *hookah* lying near the corpse, he suspected that the deceased had been enticed away from home under some pretext and then murdered, and resolved to question the prosecutrix as to whether she entertained any suspicions against any person or persons. He found the old woman in a state bordering on imbecility, from the stupifying effects of her misfortune, and utterly failed in getting from her any thing like a connected recital. After repeated efforts, he succeeded in fixing her attention, and then she disclosed her suspicions of the prisoner in the manner set forth in her statement above noticed. The darogah arrested the prisoner, and he, without hesitation, admitted both the murder and the theft and named his associates. He then gave up the stolen articles, which he had left at the house of the witness, Tarachand Bera, and produced two *daos* as the instruments used in effecting the murder, admitting that the larger and heavier weapon had been used by his accomplice, Cheeroo,* and the smaller by himself..

The woman Munjeree affirms that she was robbed, and that the prisoner restored all the stolen articles, except two pieces. Her account of the restoration of the property differs from that given by the prosecutrix, but her statement is somewhat confused, though it is easy to infer from it, that the prosecutrix was in some material way the means of the theft becoming known, the stolen things returned and the complicity of the prisoner in the robbery established.

The witness, Tarachand Bera, admits that the prisoner left a bundle at his house and promised to return with his family, and occupy an empty house adjoining, with the intention of settling in those parts, and that that bundle was found to contain the articles stolen from the prosecutrix.

The evidence of the assistant-surgeon goes to show, that on examination of the body of the deceased, a severe wound was found traversing the back of the neck transversely, just above the line of the shoulders, completely dividing the spine and nearly effecting decapitation. Mr. Chevers gives it as his opinion, that the wound must have been inflicted during lifetime, and at a moment when the deceased was either on his knees, or lying with his face to the ground, and have caused instantaneous death. He adds that the instrument employed was most probably a *dao*, a heavy sword, or some such implement, and points to the larger of the two *daos* produced in court, as a weapon singularly calculated to cause such a wound.

The witness, Fukeerdass Bera, says that the prisoner told him one day, that he had left a *dao* in his (deponent's) cow-shed, and that he heard some days subsequently that the darogah had come with the prisoner and taken it away.

The three following witnesses deposed to having been present at the inquest, held on the body of the deceased by the darogah, and to have seen a wound on the back of the neck, which nearly severed the head from the trunk.

The remaining witnesses, for the prosecution, prove the finding and identity of the property stolen from the prosecutrix, and the confessions of the prisoner before the police and magistrate.

The prisoner's confessions are a full and complete disclosure of the murder itself, and the causes that led to its commission, of the subsequent theft and deposit of the plundered property, and the part individually taken by him in each of these crimes, and I have scarcely ever perused so revolting a record of human guilt and human depravity. The foudaree confession differs from the mofussil in some immaterial points, but both prove the prisoner's direct participation in the crimes charged.

The *futwa* of the law officer convicts the prisoner of being an accomplice in the wilful murder of Manick Dhoba, of stealing the prosecutrix's property, and placing it under false pretences in the house of Tarachand Bera, and declares him liable to suffer death by *kissas*.

I concur in the conviction of the prisoner, and, considering him as the author and part perpetrator of a cruel, deliberate, and cold-blooded murder, and seeing no palliating circumstances

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in his case to render him an object of mercy, recommend that he suffer the extreme penalty of the law.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Raikes.)

MR. H. T. RAIKES.—There is no reason why the prisoner's confessions should not be accepted.

It seems quite clear that he was detected as the thief who stole Munjeree's property, and that the exposure which followed drove him from the village. His pointing out the place where he concealed the *kataree*, and restoring the property stolen from the prosecutrix's house (after the murder of her husband), which he had deposited with Tarachand, afford such corroboration of those parts of his confession, that it may, I think, be generally trusted.

It may be a matter of doubt whether or not the prisoner had accomplices, as asserted by him; but even if he had, it does not, in my opinion, remove from him any part of the guilt of this murder. He fully and freely admits that his own participation was, throughout, the same as that of the party who he says, dealt the fatal blow. He confesses that he himself entertained the same thirst for vengeance, used the same arts to induce the deceased to leave his home, and to the last was aiding and abetting in, and had fully determined on, this murder. In such a case there is no legal necessity to discriminate between the guilt of one or other of the murderers, and if the prisoner had accomplices, he and they are equally guilty of the crime.

I would convict the prisoner as an accomplice in wilful murder and sentence him capitally.

MR. DUNBAR.—The confessions have been only verified by the attesting witnesses. The general truth of the statements they contain has, moreover, been confirmed by the finding of the *hookah* near the body, of the stolen property with the party in whose custody it was stated to have been left, and of the *katarees* in the places indicated by the prisoner. The magistrate did not consider that there was evidence sufficient to convict Cheero, whom the prisoner names, in his confession, as his associate in the crime : he did not therefore commit him, but as the said Cheero confessed before the darogah, that he was present when the murder was committed, there is reasonable ground for believing the prisoner's statement, that he did not do the foul deed unaided ; but be this as it may, his confession furnishes full and unquestionable evidence of his participation in the crime. I concur, therefore, in the conviction and in the sentence proposed.

PRESENT :

SIR R. BARLOW, BART., }
 AND } *Judges.*
 J. R. COLVIN, Esq., }

GOVERNMENT, FOOLCHAND DASS AND NYAN DASS

versus

SUNKER DASS, (No. 2,) AND MAGUN DASS, (No. 3.)

RUNGPORE.

CRIME CHARGED.—1st count, wilful murder of Potiram, brother of the prosecutor ; 2nd count, being accomplices to the above crime, and 3rd count, being privy to the first above-mentioned crime.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of zillah Rungpore, on the 16th July 1853.

Remarks by the officiating sessions judge.—It would appear that the murder took place at Kuncheebaree, in the jurisdiction of the Olecpore thannah, on the night of the 30th of April last, and the chowkeedar in his rounds came upon the body, and immediately gave intimation at the thannah of his having found the corpse of a murdered stranger. The darogah proceeded to the spot, where he arrived on the 1st of May and found the body had been recognized, and on the 3rd of May he arrested the prisoner Magun Dass, who made a sort of confession, and on the 5th, the other prisoner was arrested at the *haut* of Muzoomdar in Dooglesutee, and sent in to the magistrate on the 7th.

It is shown, that on the night in question, Aditya gave a supper, in honor of his daughter's marriage with Ramanath Dass ; that part of the guests went away afterwards, and the rest of them slept where they were. The deceased and the two prisoners, one on either side of him, lay down on the floor, and very early in the morning he was discovered a corpse, and neither of the prisoners was to be found. The body was then removed out of the house by Keenah and Moochear to the place where it was found.

The prosecutors, Foolchand Dass and Nyan Dass, are brothers of the deceased. Foolchand states, that one day in Bysakh, a friend of this Aditya came to their house and asked his brother, Potiram, the deceased, to come to a supper given in honor of his daughter's marriage ; his brother refused, but after some time he was persuaded and went ; before he started, deponent went to his uncle's house at Kholahattee. The next day two men, whose names he does not know, told him his brother had been killed, and the body thrown into the bamboos

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One prisoner convicted on the purport of his several confessions of being an accomplice in wilful murder, and sentenced to transportation for life. Another prisoner convicted of privy to the murder and sentenced to seven years' imprisonment.

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near Nowabgunge. Afterwards, two neighbours came and told him that Magun and Sunker had killed his brother. He then went to his house, and when he got there, found a thannah burkundauz calling his mother. Upon inquiring what was the matter, the burkundauz said his brother was murdered, and desired deponent to come with him. He went to the darogah and saw the corpse, but it was enveloped in a mat and he did not see it opened. He told the darogah that there was a quarrel with Aditya, who had called his brother to a supper and killed him; and that if inquiries were made, it would be proved; and that he then accompanied the darogah in his investigation. There was an old quarrel between Potiram and Sunker about some land, and a quarrel between Magun and the deceased about cattle.

Nyan Dass deposes, that for the last three years there has been a quarrel between them and Sunker about land, and that Sunker succeeded in getting his brother, the deceased, three months' imprisonment, and that their cattle had all been attached by Sunker under Regulation V. of 1812, and that Sunker is their cousin, and quarrelling with them had left their house and gone elsewhere; he then tells the same story of Aditya's invitation and his brother being prevailed upon to go to the supper; and the next day his hearing of his death, and upon his going to the place recognizing the corpse, with a wound in the stomach, as that of his brother Potiram. He also was with the darogah at the time of the investigation.

Thakoor Dass, witness No. 17—States, that on the night in question, he went to supper at his friend Aditya's house, and there met Potiram, who also was a friend of Aditya's; while they were eating, Sunker and Magun arrived; after supper Magun, Sunker and the deceased slept in one room, he and Moocheea in another, and the rest in different parts of the house. Somewhere about four o'clock in the morning, Moocheea, Ramanath and some one else raised a cry of thief and they all got up, and then some one said that Magun and Sunker had killed Potiram and run away. The whole house was then roused, and the deponent saw the deceased lying dead with a wound in his belly, and the blood over his person and clothes; he then took his rooksut and went away. He saw no knife nor instrument. He did not see either of the prisoners after the alarm; they had gone away. He knows from report, of a quarrel between the prisoner Sunker and deceased. There were no words of dispute that night. Chundee, Puran, Joy and Ghotah were not at the house that night.

Ramanath Dass, witness No. 18, (the bridegroom and son-in-law of Aditya)—States, that he saw Sunker and Magun (the prisoners) at the supper, and that afterwards he and Bhuba-

nund slept upon the *tuktposh*, and the prisoners and two other men, whose names he does not know, on the floor; that early in the morning some one of them made a snorting noise, and all immediately got up, and there was a regular *goolmal*; and that Aditya hearing the noise came with a light, and then they saw a man lying dead with a wound in his belly, and Aditya said that Sunker and Magun had killed Potiram. He then went to another house and knows nothing more. Sunker and Magun were not in the house, nor to be found when Aditya came with a light.

Bhubanund Dass, witness No. 19—Tells exactly the same story as witness No. 18.

Brijokishore, witness No. 20—States that he was asked to the supper, but did not go; the following morning, about 4 o'clock, Aditya called him, their houses being close together, and begged him to come over with him, as Sunker and Magun had killed Potiram; he went and found the corpse as it has been before described. He knows of the quarrel of old between Sunker and Potiram.

Radhakant, witness No. 21—Was asked to the supper and went home afterwards. Early in the morning, Aditya came to his house and said "Sunker and Magun have killed Potiram and run away." He went with Aditya and saw the corpse. Knows of the quarrel between Potiram and Sunker.

Witnesses Nos. 22 to 24—Were at the supper, and tell exactly the same story as No. 21.

Witness No. 25—Merely heard about the murder.

Witness No. 26—Was sent to arrest Sunker and brought him.

Witness No. 27—Was going his rounds one Sunday morning, when he saw the corpse of a stranger and gave intimation at the thannah.

Witnesses Nos. 32 and 33—Know of a quarrel for the last three years between the parties.

Witnesses Nos. 4 and 9—Witnesses to darogah's investigation.

Mr. J. K. Walter, Civil Assistant Surgeon, No. 10—States that the body of Potiram was brought to him on the 4th of May last, in so decomposed a state, that a minute investigation was out of the question, but that he observed an "aperture in the abdomen, a little below the ensiform cartilage, from which a considerable part of the bowels protruded," and he considered the "wound sufficient to cause death."

Witnesses Nos. 4 and 11—Witnesses to the statement of Sunker before the darogah.

Witness No. 4.—Witness to the statement of Magun before the darogah.

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Witnesses Nos. 13, 14, 15 and 16—Witnesses to the statements of Sunker and Magun before the magistrate.

Sunker, prisoner No. 2, when arrested, confessed to assisting in the murder. He says that it was pre-meditated; that in Poos last, he, Puran and others, consulted how it should be managed; that Puran instructed him to go to Aditya's, and to watch the deceased and sleep with him; that he did so, and early in the morning Puran, Joy, Chundee and Ghota Sircar, came to the door and gave a signal, upon which he opened the door and they came in; that Potiram awoke and entered into conversation with them all, and that they began smoking; that Puran whispered to Ghota, who seized Potiram by the throat, and Chundee and Joy secured his legs, and the prisoner his hand, and they wanted some sticks which were outside, but Puran told them to keep their hold and he then threw himself violently on Potiram's chest, who groaned and all of them ran away; and that since then Puran kept him at his house, until the time of his arrest, when he escaped to take advice as to his movements and was seized at Muzoomdar's *haut*. He reiterates this account before the magistrate. Before the sessions, he declares his statement was extorted, and denies having taken any part in the murder which he witnessed as detailed above, and was silent under the influence of their threats, both at the time and since. He produces one witness, No. 40, Doolal, who merely says, he heard him crying out at the thannah, but saw no beating or ill-use, and cannot in any way substantiate the story. It is clearly proved none of the people saw Puran, Joy and the others, he mentions, at Aditya's house, and it is not probable that four men should come into a room, where a number of persons was sleeping, awaken only two of them and smoke and talk without disturbing the rest, who, even if they were not fully roused, would have been partially aware of what was going on. I therefore entirely discredit his story as far as his accomplices, &c.

The prisoner, Magun, when arrested, denied any participation in the murder, but said that it was committed by Sunker alone; that he, uninvited, accompanied Sunker to the supper at Aditya's, and that after eating all, went to sleep in different places; that he and Sunker laid themselves down, one on the right and one on the left of Potiram, and that early in the morning Sunker called him and told him to go home, and then stabbed Potiram in the stomach with a knife and they both ran away; that Sunker had never consulted him about the murder, and that he had no enmity towards the deceased. Sunker is his nephew. He does not know whether Sunker brought the knife with him, but that he believes Sunker had

it. He reiterated the same story before the magistrate, but before the sessions court, he denies his former statement, which he alleges the darogah extorted by ill-usage and says he went to the supper, and afterwards slept at Aditya's; that early in the morning he heard Potiram groan, and discovered he was murdered, but he does not know by whom. His witnesses :—

Witness No. 45.—Merely knows Potiram was formerly imprisoned on Nujeet's complaint, and knows of no quarrel between Potiram and Magun.

Witness No. 46.—Nujeet is the complainant in the case alluded to; Magun and he are of the same caste; he was in the row.

Witness No. 47 Blubany.—He knows of no quarrel between Magun and the deceased.

Verdict of the jury and opinion and recommendation of the sessions judge.—The jury, consisting of Sreekanth Newgee, Roy Chunder Roy and Esser Chunder Dass, are unanimous in their verdict of *guilty* on the first count, against the prisoners, and I agree. Sunker has, by his own showing, long pre-meditated the crime and seized the first favorable opportunity of carrying it into effect, and I know not of one single extenuating circumstance in his favor. I therefore recommend capital punishment. Magun, in all probability was led by him in the business, and I would therefore spare his life, and recommend a sentence of imprisonment for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Baronet, and Mr. J. R. Colvin.)—The prisoner, Sunker Dass, distinctly, before the magistrate, and again before the sessions judge, admitted that he saw Pran, Joy, Ghota Sircar and others, come to the deceased, Potiram, with whom they had some conversation, in the midst of which they seized and killed him. He goes on, before the magistrate, to state that Pran took him by the hand, telling him there was no fear, he (Pran) had done the deed, and that he would not kill him, the prisoner; that he then accompanied Pran to his house, where he was kept till he made his escape, and was afterwards seized on the charge of murder. Pran and the others implicated by the prisoner were not seen by any witnesses, at the house in which the murder took place, and the prisoner's statements regarding them are considered by us to be altogether improbable. The prisoner's admissions in both the lower courts, with one exception, correspond with his confession in the mofussil. It is clear that he saw the deceased murdered, and by his own account accompanied one of the murderers to his home, where he remained for some days,—persuaded to go there, as he says before the magistrate, and coerced, as he alleges before the sessions judge.

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The point, in which the prisoner's confession before the police differs from his subsequent admissions, is one of a most essential nature, inasmuch as he acknowledged to the darogah that he had hold of one of the hands of the deceased, while those whom he accused seized him by the arms and legs, and despatched him.

In this case there is no direct, and but little circumstantial evidence, such as would warrant the Court in passing the extreme sentence of the law upon the prisoner, but that he accompanied the murderer home and remained in his house is fully proved on his own statement.

We convict the prisoner, upon the purport of his several confessions, of being an accomplice in the murder, and sentence him to imprisonment, for life, in transportation.

The evidence, against the prisoner Magun, is derived also mainly from his confessions in the mofussil and before the magistrate. They extend to admission before the police of having seen the prisoner, Sunker, stab the deceased, who was sleeping between them, a statement modified before the magistrate to a belief that the prisoner did the deed; that on hearing the deceased cry out, he awoke and saw him dead, and immediately absconded. In the sessions court the prisoner stated he was sleeping at Aditya's house. Early in the morning he heard deceased groan, and discovered he was dead. We convict the prisoner of privity to the murder, and sentence him to seven years' imprisonment, with irons, and labor.

The Court deem it necessary to remark, that the sessions judge in stating that the prisoner, Sunker, "reiterated his mofussil confession before the magistrate," has fallen into a grave mistake or misapprehension of what the prisoner did say as to his actual participation in the murder. The essential discrepancy has already been pointed out in the early part of this note.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT CO-PROSECUTOR AND NEELKANT
SIRCAR,
versus

MADHOO SIRDAR (No. 11), DOOTEE OSTAH (No. 12), AND NEEKOO NUSHA (No. 13.)

CRIME CHARGED.—Nos. 10, 12 and 13 with committing a dacoity in the house of the prosecutor, and plundering therefrom property valued at Company's rupees 408-11, and on a second count, with being accomplices, aiding and abetting in the commission of the said crime. Nos. 11 and 12, on a third count, with having in their possession property acquired by the said dacoity, knowing it to have been so obtained.

CRIME ESTABLISHED—Dacoity.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 19th April 1853.

Remarks by the officiating sessions judge.—From the deposition of prosecutor and evidence of the neighbours, it is shown that a dacoity took place in the house of Neelkant Sircar, on the 9th of February 1853, and property to the value of rupees 408-11 was carried off; the prisoners were clearly recognized by the light of the torches by the prosecutor and witnesses Nos. 1, 2 and 3, and the witnesses Nos. 5 and 6 heard the prosecutor say who the dacoits were immediately after the occurrence.

Witnesses Nos. 9 to 12 were present when the property was found.

Witnesses Nos. 1, 4, 13 and 14, recognise it to be the prosecutor's.

Prisoners all plead *not guilty* and claim the property; No. 12 Dootec, declaring that the prosecutor has a quarrel with him, which he fails to prove, and not seeing any reason to discredit the evidence of the eye-witnesses to the fact, and finding that Madhoo Sirdar No. 11, has already been convicted of dacoity, I sentence him to fourteen years, and the others to ten years each, with labor and irons.

Tried alone under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The dacoity occurred on the night of the 9th February; the darogah began his inquiry and took the deposition of the prosecutor next day, the 10th; in that deposition, he first said, he had recognized the prisoners, but he afterwards added, that he suspected them, because they are men of bad character; he

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others.

Of three pri-
soners convic-
ted of dacoity
by the sessions
judge, the sen-
tence on two
was upheld,
and one was
acquitted.

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DAR and
others.

also varied in his deposition before the sessions judge, as to the time when he had recognized the dacoits. I place no trust, therefore, in his statement upon this point. Of the eye-witnesses, Badeeram deposed to having recognized all the prisoners, Sunker to recognizing Madhoo and Dootee, and Ramdhun mentions Dootee as the only one recognized by him. Not taking the prosecutor into account, Dootee was therefore recognized by three persons, Madhoo by two, and Nekoo by one only. Property identified as belonging to the prosecutor was found in the houses of the two former, in the house of Nekoo nothing was found. The conviction is good against Dootee and Madhoo and I confirm the sentence of the sessions judge in respect to them.

The evidence against Nekoo is insufficient for conviction. He is accordingly acquitted and ordered to be released.

PRESENT :
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

MUNDEEL.

SARUN.

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Case of
MUNDEEL.

Prisoner
convicted by
the sessions
judge of aiding
and abetting
in a theft of
opium, ac-
quitted in ap-
peal, the evi-
dence being
insufficient.

CRIME CHARGED.—1st count, theft; 2nd count, aiding and abetting in a case of theft of opium, value 420 rupees, the property of Government, from a boat engaged at the Opium Godownus in Sewan, zillah Sarun.

CRIME ESTABLISHED.—Aiding and abetting in a theft of opium, value 420 rupees.

Committing Officer—Mr. J. F. Lynch, deputy magistrate of Sewan.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 23rd June 1853.

Remarks by the sessions judge.—Although there is, in this case, nothing like direct evidence against the one prisoner who has been convicted, still circumstances make so strongly against them as to leave no doubt whatever on my mind, of his having been guilty of the charge upon which he has been convicted.

The facts of the case are briefly as follows :—

A quantity of opium having been shipped on board a number of small boats, in order to be sent to Patna, 25 jars of it were placed in the one of which the prisoner was the *manjee*, and the whole of them were then anchored in a line at a little distance from the shore ; the prisoners, Solamut and Moorad Alee, (with some other parties) being directed to keep guard over them. The next morning the boat, in which the

prisoner was, was found to have come stern on to the shore, and to have been robbed of 3 of the 25 jars which had been put on board. All the boats were long and narrow, and there was just room in them to hold the jars 2 in a row, and they were besides covered with *chuppurs* (roofs), which came down so low that the jars could not be taken out until they were raised up; and besides this, the boats were so narrow, that even one man getting into them would have so much depressed the side, that it is quite impossible that the jars could have been taken out without the cognizance of the people on board. The prisoner, Mundeeel, and a boy were the only parties on board, and they were both sleeping near the stern (where they could see all along the boat under the roof) and yet they pretend they do not know how or when the opium was stolen. Mundeeel says that having got up at midnight to ease himself, he saw that the boat had come to the shore, and also saw some of the baskets, in which the jars had been placed, in the water, and on this he called out and told Solamut of it; but, in my opinion, this defence is utterly worthless, as it must have taken 2 or 3 men *inside the boat* to have removed the jars (this could not have been done from the outside); and this again could not, I think, have been done at all without the consent and knowledge of the boatmen. Although, therefore, there was no direct evidence to show that the prisoner actually aided in their removal, the facts of the case are so peculiar, that it appears to me that it *could not have been* done without his consent, even if he did not personally aid in it; and I think there are ample grounds for convicting him of aiding and abetting in the theft. The moulvee also convicts him in this count and makes him liable by *tazeer*; and, concurring in this finding, I have sentenced him as noted in the preceding column.

Sentence passed by the lower court.—Imprisonment, with labor and irons, for five years.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Baronet.)—The evidence is by no means sufficient for a conviction. The indictment does not set forth that the prisoner was in charge of the opium; he was only *manjee* of the boat, which was under the guard of Solamut Alee and others on shore, about 10 or 15 *hathas* distant. The prisoner and a boy were on the boat, on which prisoner was asleep; during the night it went ashore stern on, and in the morning it was discovered that the opium was gone. It is stated as a ground for conviction, that it is impossible the theft could have been committed without the prisoner's assent, with reference to the size of the boat and its being covered with a thatch. It was notwithstanding committed without the guard's knowledge, who was close by, and close to the Opium Godown, over which there were also sentries

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placed. The evidence is altogether unsatisfactory, and does not afford proof of such a presumptive nature as would warrant conviction. The prisoner is acquitted and must be released.

 PRESENT:

 J. DUNBAR, Esq., Judge.

 GOVERNMENT AND BUDDEENATH MISSREE

versus

KOOCHUL CHAOOLYA (No. 11), KISHORE PURDHAN (No. 12), GOORAEEDASS *alias* GOOROOPERSAD DASS (No. 13), MUNNOO PAUL (No. 14,) AND BHEEM MYTEE (No. 15).

 MIDNAPORE.

1853.

 August 26.
 Case of
 KOOCHUL
 CHAOOLYA
 and others.

Five prisoners convicted of highway-robbery attended with severe wound-ing, and sentenced by the sessions judge to sixteen years' imprisonment. In appeal the sentence reduced to ten years' imprisonment.

CRIME CHARGED.—1st count, highway-robbery, accompanied by severe wounding, with intent to kill or inflict other serious bodily injury, in having stopped the plaintiff on the highway, severely wounded him with the blows of a *lattee*, with intent to kill or inflict other serious bodily injury, and robbed him of property to the value of 12 annas ; 2nd count, with aiding and abetting in the above crime.

CRIME ESTABLISHED.—Highway-robbery attended with severe wounding.

Committing Officer—Mr. George Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luko, sessions judge of Midnapore, on the 30th June 1853.

Remarks by the sessions judge.—It is in evidence, that on the 17th April last, the prosecutor, Buddeonath Missree, accompanied by his son and others, proceeded to the village of Rooknepore, to attend a feast and to gather offerings at the house of Nursing Purya, witness No. 22 ; they set out to return home about 8 p. m., and had reached a tank in the neighbourhood of the village of Lahurda, when they were accosted by 7 or 8 men with sticks in their hands. The former, with the exception of prosecutor, whose age prevented his making his escape, seeing that mischief was intended, ran away. The prisoners immediately attacked the prosecutor Buddeenath, and after inflicting sundry severe wounds upon him, robbed him of his clothes and every thing he had in his possession and made off, leaving him senseless and naked. The prosecutor and witnesses identified the five prisoners as the parties who assaulted and robbed him. The prisoners plead *not guilty* and set up an *alibi* in defence, which they fail to establish. The evidence for the prosecution is clear and conclusive. The identity of the prisoners was deposed to by the prosecutor and witnesses from the first, and their

testimony on this point is entitled to every credit ; first, because it was bright moonlight when the assault was made, and objects, especially when near, were clearly discernible ; and secondly, because the persons of the prisoners were quite familiar to the prosecutor and his companions, whose place of residence is within the call of the village of Baleeda, where the prisoners live, and they were in the habit of seeing them daily. According to the evidence of the native doctor in charge of the out-station of Nugwa, the prosecutor was most severely beaten with clubs or some other blunt weapons ; the bone of the right arm above the elbow was fractured ; there was a wound on the left side of the head above the temple, penetrating to the bone, and the loins and other parts of the body exhibited bruises and other marks of blows of sticks. The native doctor further deposes, that in consequence of these wounds, the prosecutor's life was for some time in a precarious state ; and that although his usual health is now restored, the bone of the arm has not perfectly united and the arm itself will never be of much use to him hereafter. The evidence is not quite clear as to which of the five prisoners inflicted these blows, but they were all armed with *lattees* and were all concerned in assaulting and robbing the prosecutor ; they were equally implicated, and are in my opinion all equally guilty. Their intention might not have been to take the prosecutor's life, but in the brutal assault they made on him, they were clearly quite reckless of any consequences that might ensue ; and they have only escaped the extreme penalty of the law from the circumstance of the wounds inflicted not having reached a vital part. The assessors declare the prisoners guilty of the 1st count of the charge in the indictment, and in this verdict I concur. There is no extenuating circumstance to be urged in behalf of the prisoners ; they are all evidently desperate characters, and the terror of the neighbourhood in which they reside ; but since the prosecutor has recovered and is, with the exception of the weakness of his arm, in his usual state of health, a punishment within the competence of this court may be awarded, and a sentence as indicated in the statement is accordingly passed. In conclusion, the gross negligence, if not collusion of the phareedar, must be noticed who (according to the evidence), with the assistance of the chowkeedar, arrested the prisoner, Koochul Chaoolya, No. 11, within a very short time after the assault and robbery occurred, and for some unexplained cause not only released him, but never made any report whatever to the thannah. The deputy magistrate has made no inquiry on this head whatever, nor has he called on the darogah to state why he never went in person to investigate so serious a case as that under

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review, but entrusted the duty to a burkundauz, who could neither read nor write. The robbery occurred within one *coss* of the thannah and of the deputy magistrate's cutcherry, and yet the gross dereliction of duty on the part of the police of the latter not only escaped censure, but all notice or comment on the part of the deputy magistrate.

Sentence passed by the lower court.—Fourteen (14) years, and two (2) years more in lieu of corporal punishment, total sixteen (16) years' imprisonment, with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence for the prosecution is clear and positive, and has been consistent throughout. The conviction is therefore good. As the prosecutor's party consisted of ten men, it seems scarcely probable, that the attack was made by a smaller number early in the night, and under a bright moon, with the intent merely of committing a high-way robbery on persons, to whom they were personally well known. I apprehend the assailants must have been actuated by other motives ; but be this as it may, they are answerable for what they are proved to have done. As, however, the prosecutor is restored to his usual health, and the property lost was but of trifling value, I think a shorter term of imprisonment than that awarded by the sessions judge may suffice, both in the way of actual punishment to the prisoners, and as a warning to others. I accordingly reduce the sentence to imprisonment for ten (10) years, with labor in irons.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MUJOOM SHEIKH
versus
KULEEM SHEIKH.

CRIME CHARGED.—Wilful murder of Mohubut Chokra.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. F. Beaufort, officiating joint-magistrate of Pubnah, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 30th July 1853.

Remarks by the sessions judge.—This case rested entirely on the evidence of two boys, nephews of the prisoner, but whose statements were confirmed by the confession made by the prisoner, first before the thannah mohurir and afterwards before the joint-magistrate. The case was tried before the same jury as the preceding trial. The elder of the two boys, witness No. 1, in the calendar, when interrogated, denied all knowledge of the occurrence, and repudiated his foudarry deposition; and all that could be elicited from him was that Mohubut Chokra had been in the *maut* or plain, but had gone home before they left the place. The next witness, also a boy, and apparently not more than 7 or 8 years of age, seemed, in our opinion, not to have any distinct knowledge of the nature of an oath, or the consequences of telling an untruth; and as (when questioned) he also denied all knowledge of the occurrence, he was not then examined further. The next witness, No. 7, deposed to seeing the prosecutor's son with the prisoner and others at the *maut*, and this he told the prosecutor. It being essential to have further evidence to this point, and to ascertain the nature of the complaint made by the prosecutor, Mujoom Sheikh, to the zemindar's omlah, and also to learn how the police got the clue which led to the apprehension of the prisoner, the case was postponed on the 22nd July, and the witnesses named, including the thannah mohurir, were sent for through the joint-magistrate, who was requested to take *moochulka* from the fathers of the boys to secure their attendance. On the 30th the case was again taken up. The zemindar's omlah (a *gomashtah* and *ameen*) deposed that the complaint lodged by Mujoom was, that Urin's cattle had destroyed his *cheena* crop. He did not name the prisoner at all, who is Urin's son. The thannah mohurir deposed to the boys *present* and another, by name Gurriboollah, informing him that Mohubut had been killed by Kuleem, on which he apprehended the prisoner, who confessed that no threat or encouragement was held

RAJSHAHYE.

1853.

August 26.

Case of

KULEEM

SHEIKH.

Prisoner convicted of culpable homicide on his own confessions before the police and the magistrate, although the body of the deceased was not found, and two boys on whose evidence the case chiefly rested repudiated their foudaree depositions.

Sentence of seven years confirmed in appeal.

1853.

August 26.

Case of
KULEEM
SHEIKH.

out to him to get him to confess. He confessed on the second day, that the prisoner did not point out where he had thrown the body into the river, but the boys did. The other witness, examined in the foudarry, who deposed to seeing the prosecutor's son at a *maut*, was not to be found. The mofussil confession of the prisoner is a long one; the substance is as follows: That on his coming away from the *maut*, where he had been working, the deceased gave him abuse, when he struck or gave him a slap on the side of the head; the boy on this began to scream out and twist his neck, when he struck him another blow on the back and he fell down senseless on the ground; that he dipped a cloth in the water and put it over his face, but he did not come to his senses and finding he was dead, he took the body down to the river, and wading up to his knees, threw the corpse in, and after seeing it float away with the current, he returned home. That the reason he killed the deceased was, because there was a dispute between his father and the deceased, relating to some land, and they, father and son, were always abusing him. This confession was fully proved to have been voluntarily made by the prisoner, by two attesting witnesses and the mohurir who took down the confession before the joint-magistrate is nearly to the same purport as the mofussil one, but not so much in detail, nor is the motive for killing the deceased repeated. On the contrary the prisoner says he never intended to kill the deceased. This confession was also proved to have been voluntarily made by the prisoner before the joint-magistrate, on the 2nd of May. The boys were not examined again, as from some misconception of the order regarding them, and because their fathers could not give a *moochulka* on stamp paper, they were sent by the joint-magistrate (as I understood) to jail. The defence, as I fully anticipated it would be, was that the prisoner had been beat and maltreated by the police, but none of the witnesses supported the pica. The jury were then charged by me to consider their verdict, that there was no eye-witness or evidence to the fact, and no *corpus delecti*; but if the prisoner's confessions were to be believed, the latter was accounted for; and the body not being found was no bar to their convicting him either of murder, or culpable homicide. The prosecutor, Mujoom, had distinctly declared he had never seen his son since the day he went to complain of the trespass, or damage done to his *cheena* field. One witness saw Mohubut in the *maut*, and also the prisoner. The boy, Jeollah, though he denied his foudarry deposition, had deposed that the deceased had been with them in the *maut*. The mohurir had deposed, that the clue to the crime he got from him and two other boys. That the boy, Kooran, as they must have

seen, was too young to understand the nature of an oath, but after confronting them with the mohurir I had intended examining them again; but unfortunately, and through a mistake, the joint-magistrate had put them in jail, and so whatever they might now say (if examined), they (the jury) or the prisoner might ascribe to their having been imprisoned and intimidated. That I had watched the boys when standing by the mohurir, and the elder had said nothing, nor did he dissent from what the mohurir said; that what the mohurir deposed to hearing from the boys was not evidence, only a clue to evidence; all the evidence was circumstantial. The deceased was seen last in company with the prisoner and others in the *maut*, and had never been seen or heard of since. The prisoner confessed he had killed him, but without intending to do so, and if it had been proved that he brought water, or a wet cloth, and tried to revive the deceased, there would have been some grounds for supposing he did not mean to murder the deceased. The prisoner denied both confessions; but should *one* or *both* be admitted, they must be taken altogether, and if they (the jury) had any doubt, the prisoner was entitled to the benefit of that doubt. The jury on this brought in a verdict of culpable homicide, and concurring with them, and holding it to be an aggravated case, with reference to the disparity of age between the prisoner and deceased (who was only ten or twelve years old), I have sentenced the prisoner asstated in the preceding column.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The guilt of the prisoner is manifest in his own confessions, which are duly verified. The sentence is confirmed.

1853.

August 26.
Case of
KULEEM
SHEIKH.

PRESENT:

J. R. COLVIN, Esq., }
 AND } Judges.
 J. DUNBAR, Esq., }

GOVERNMENT

versus

MUTTRAPERSHAD TEWARY.

PATNA.

1853.

August 26.
Case ofMUTTRAPER-
SHAD TEWA-
RY.A sepoy
convicted of
the wilful
murder of an-
other sepoy,
and sentenced
to suffer death.

CRIME CHARGED.—Wilful murder of Doorjun Singh, Sepoy. Committing Officer.—Captain R. Spencer, officiating cantonment joint-magistrate of Dinapore.

Tried before Mr. B. J. Colvin, officiating commissioner with powers of a sessions judge, Patna, on the 8th August 1853.

Remarks by the officiating commissioner, with powers of a sessions judge.—Early on the morning of Wednesday, the 20th ultimo, the sepoys of the 14th regiment were preparing for parade. Presently attention was attracted by the discharge of a musket. The deceased was discovered to be wounded, and the prisoner was seen running from the ground. He was followed by witness No. 1, to whom he acknowledged the deed and threatened to shoot him also; but he was persuaded to deliver himself up and was disarmed. He also told witnesses Nos. 2 and 8, that he had shot the deceased. The deceased likewise named him to witnesses Nos. 9 and 10, as the person who had fired at him. The medical officer, witness No. 3, proves death to have been the result of a gun-shot wound; and states, that it was quite possible for the deceased to have uttered names after receiving it, although he could not have spoken a connected sentence.

The fire-lock taken from prisoner was proved to have been quite recently discharged, and on examining his pouch there were only eight instead of ten bullets, as should have been in it. Although only one shot was fired, two balls had been put into the charge, which (the musket being fired off close to the deceased) made but one passage through his body. The marks of both were, however, found on an opposite wall, to which one ball was found sticking, while the other had rebounded and was picked up near it. The jacket which the deceased wore, and which has been produced in court, was burnt at the back by the powder from the proximity of the musket at the time of its discharge, and is quite saturated with blood and rent where the balls passed through on the other side. The deceased was picked up alive with the jacket burning on him, and sent to the hospital, on the road to which he died.

The prisoner confessed the crime to the committing officer, alleging that during the previous night deceased had attempt-

ed an indecent assault on him, and in the morning had applied opprobrious epithets to him, under the provocation of which he killed him. There is no proof of the truth of this allegation.

The confession is distinctly proved to have been free and voluntary. The prisoner, however, denied his guilt before me, and says the evidence against him is influenced by the enmity borne to him by witnesses Nos. 1 and 10. He has called no witnesses.

The law officer convicts the prisoner of wilful murder, on violent presumption, and declares him liable to *kissas*. I concur in the conviction and, under the circumstances, it is my duty to recommend that the prisoner be sentenced capitally.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin and J. Dunbar).—The evidence against the prisoner is quite conclusive. No one saw him in the act of firing the shot but, immediately after the report, he was seen running away with his musket in his hand. He was instantly followed and secured, and it was found that his musket had just been discharged, and that two, out of the ten bullets, usually kept in his cartouche-box, were missing. The two bullets were soon after found, one fixed in a wall opposite to the place from which the musket had been fired, and the other, which had rebounded from the wall, on the ground near it. The prisoner was named by the deceased at the time, as the person who had shot him, and he himself stated that the act was his to the persons who apprehended him : a confession which he repeated formally three days afterwards, or on July 23rd, to the cantonment magistrate of Dinapore.

It is clearly proved that death was caused by the shot wounds. The prisoner cites no evidence on his behalf, and the case presents no circumstance of extenuation.

We, therefore, convict the prisoner of murder and sentence him to suffer death.

1853.

August 16.

Case of

MUTTRAPER-
SHAD TEWA-
RY.

PRESENT :
J. DUNBAR, Esq., Judge.

PUTEE THAKOOR, MUSST. SHEORANEE AND
GOVERNMENT

versus

CHUTTUR THAKOOR (No. 1), BUSRAJ CHOWDREE
(No. 2), SUBOOR THAKOOR (No. 3), LUTCHMUN
THAKOOR (No. 4), AND SREE THAKOOR (No. 5).

TIRHOOT.

1853.

August 27.

Case of
CHUTTUR
THAKOOR and
others.

Four pri-
soners con-
victed as ac-
complices in
the wilful
murder of two
women and
sentenced to
transportation
for life.

CRIME CHARGED.—Wilful murder of Mussts. Busree and Munhuree, deceaseds.

Committing Officer—Mr. F. Tucker, magistrate of Tirhoot.

Tried before The Honorable Robert Forbes, sessions judge of Tirhoot, on the 15th July 1853.

Remarks by the sessions judge.—I refer this trial to the superior court, not on account of a difference of opinion between my law officer and myself, but because the crime in which we agree in convicting the four prisoners, in regard to whom this reference is made, *viz.*, being accomplices in wilful murder, is one taking the final order out of the power of this court.

The indictment charges the four prisoners, and one “ Chuttur Thakoor” (acquitted and released) with the wilful murder of Mussts. Busree and Munhuree ; the alleged date of the occurrence being Friday, the 20th May 1853, or 27th Bysakh 1260 F. S., and the following are the facts of the case as elicited from the record and evidence :—

The prosecutors are son and mother, and of the two murdered women, Musst. Busree was the sister of the former and daughter of the latter ; Musst. Munhuree being the paternal aunt of the male prosecutor and the sister-in-law of the female prosecutor. The two deceased women were also nearly related to all the prisoners ; Musst. Busree being the cousin of three of them, the niece of a fourth, and the *Bhuboo* (a younger brother’s wife) of the fifth. The prosecutors and the deceased women resided together in the village of Gourya, where the prisoners also dwelt.

It appears that Musst. Busree was a widow, who, by some illicit connexion, had become pregnant, on which account the four prisoners (and the one acquitted) came a few days—the male prosecutor says six, the female prosecutor and eye witness three days—before the catastrophe which issued in this trial, to the house of the prosecutors, for the purpose of killing Musst. Busree ; but on the eye-witnesses remonstrating, the prisoners departed for that time, and on the morning of the day following, Mussts. Busree and Munhuree fled from mouza Gourya through fear and took refuge in the house of one Phuttoo Rae,

(witness No. 9), in mouza Sreepore. A few days after this, Buhoree Dosad, (witness No. 1), went to the prosecutors, and reported to them that the prisoners had murdered Mussts. "Busree and Munhuree," and that they had buried the bodies in the field of "Suboor Thakoor," (prisoner No. 4)—outside the village. Information was given at the Mozufferpore thannah, distant about four *coss*, by Budree Chowkeedar, (witness No. 8), but before the police could arrive to make the usual investigation, the prisoners disinterred the bodies from the first place of concealment, and buried them near a bridge called the "Nurhur Serai Bridge;" and on a search being instituted, the two bodies were discovered, apart from each other, deep under ground; marks of *lattee* blows on the neck being apparent on them when exhumed. The alleged cause of the prisoners killing "Musst. Busree" was the disgrace which she, as their relation, had brought upon them, owing to her becoming pregnant by an illicit *amour*; while the reason of their making away with "Musst. Munhuree," was to prevent her, as she lived with "Busree," from disclosing the murder of the former.

Two persons were adduced as eye-witnesses. The above Buhoree Dosad, (witness No. 1), and his brother, Jankee Dosad, (witness No. 2), both of whom residing (though apart) in the same village with the prosecutor and the deceased women, deposed, that on the Wednesday preceding the murder, the prisoners came to Musst. Busree's house to kill her, but that in consequence of the prosecutrix sending for them, witnesses, they came, and, remonstrating with the prisoners, induced them to depart; that about 8 o'clock on the evening of the Friday following "Buhoree" Dosad being engaged in watching his field, east of the village, and "Jankee" having just descended from a tar tree, they both heard a noise like a scream, and proceeding in the direction whence the noise proceeded, near a bamboo garden of one Duriao Thakoor, which lies between the two villages of Gourya and Sreepore, they saw the prisoners, Suboor Thakoor, (No. 4), and Busraj Chowdree, (No. 3), holding down the deceased Munhuree, and the prisoners Lutchmun Thakoor, (No. 5), and Sree Thakoor, (No. 6), holding the deceased "Busree" on the ground, and each of the prisoners having hold of one end of a *lattee*, which they pressed on the neck of their victims and strangled them, so that they died on the spot; the acquitted prisoner, Chutter Thakoor, (No. 2), standing by between the above parties, so engaged with a *lattee* in his hand, but taking no part in the business. These witnesses also depose, that on their remonstrating with the prisoners, the latter threatened to kill them, on which they, (witnesses,) decamped and went home.

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Case of
CHUTTER
THAKOOR and
others.

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Case of
CHUTTUR
THAKOOR and
 others.

Seetal Gorait and Budree Chowkedar, (witnesses Nos. 7 and 8,) both of mouza Gourya, deposed, that not seeing the two deceased women at their house, they asked the prisoners Suboor Thakoor and Lutchmun Thakoor, what had become of them ; to which the latter replied, that they (prisoners) had turned them out, and that they had gone away somewhere. The gorait accordingly, as a precautionary measure, gave information at the thannah, to the effect that Musst. Munhuree, had gone away, taking with her Musst. Busree, a widow, who showed symptoms of pregnancy, and both witnesses set on foot a search for the missing women, when on the Tuesday, Buhoree Dosad, (witness No. 1), told them to go and look in Suboor Thakoor's field ; and on their accordingly doing so, they observed earth freshly turned up, which exciting their suspicion that there might be a body, the gorait was left at the place as a watch, while the chowkeedars proceeded to the thannah and gave information. The darogah himself repaired to the spot, but on searching the place pointed out, did not succeed in finding the bodies. On proceeding, however, in prosecution of the search to the "Nurhur Serai Bridge," the bodies of the two females were discovered buried under-ground, and on being taken out, were identified by the prosecutors and others ; and the gorait, who had been left to watch the first suspected place, deposed, as he had done before the darogah and the magistrate, that on the night on which he was so engaged, the four prisoners (and Chutter Thakoor, acquitted,) came, and the prisoners Suboor and Lutchmun Thakoor, having taken him (witness) away to the east of the village, the other prisoners and their relatives disinterred the bodies, and carried them away, and in the morning the prisoners let him (witness) go.

The witness, Phuttoo Rae, (No. 9), deposed, that about 4 o'clock P. M., of the Friday, on the day of the occurrence, Mussts. Busree and Munhuree arrived at his house, in mouza Sreepore ; and on his asking them why they had come, they said that they had been annoyed and came away ; that about 8 o'clock in the evening, the prisoners Lutchmun Thakoor and Busraj Chowdree, came to his (witness's) house, and calling the two women out, took them away with them.

Two other persons, Jankee Rae and Rungbur Rae, (witnesses Nos. 10 and 11,) deposed, that on the Friday night, they saw the prisoners Lutchmun Thakoor and Busraj Chowdree, taking away the two Mussts. from the house of the preceding witness "Phuttoo Rae," and the four witnesses Roudee, Tuhul, Munhuree Domerah, and Rummun Domerah, (Nos. 12, 13, 14 and 15), deposed, that they were present when the bodies were dug up near the "Nurhur Serai Bridge."

So much time having intermediately elapsed, the bodies, when they reached the station, were far too much decomposed to admit of satisfactory medical examination. They were, however, examined to the best of his ability by the civil surgeon, Dr. A. Simpson, and the result, though not establishing any thing conclusive, is given in the following copies of two letters of the 27th May last, and two depositions of the 31st idem of the medical officer:—

To F. TUCKER, Esq.,

Magistrate of Tirhoot,

Mozzaffarpore, 27th May 1853.

SIR,—In reply to your letter of this date, I have the honor to report to you, that I examined the body of Musst. Busree sent for inspection this day.

The body was so much decomposed, that it appeared to have been at least a week interred. The right arm, including the shoulder-blade, was detached from the body, the bones of the arm and fore-arm quite denuded of flesh and the hand wanting. The abdomen was of a dark-brown parchment colour, especially on the right side, where it had burst, so as to give vent to the gases formed during the putrefaction. The intestines, liver, &c., were in a state of advanced putrefaction, the former ruptured so that the contents were extravasated among the intestines. The womb, with a portion of the small intestines, had been forced by the promotion of putrefaction (gases in the abdomen) through the external organs of generation, and a small portion of the putrid remains of these alone were visible. The skull and face were almost denuded of flesh, but I did not observe any fracture or other marks of violence. On the front of the throat, the integuments were of a darker colour than the surrounding parts, but on section I could not discover any extravasation of blood in the cellular tissue or muscles of the neck. Had strangulation been caused by pressure there with a bamboo, in the recent state, I would have expected to find more or less extravasation of blood.

From the absence of the uterine organs, I am unable to state if the deceased was pregnant, but had she been so far advanced as to be unable from her size to conceal it, the womb would not have been forced out of the body, therefore, if she had been pregnant, it must have been of short duration.

From the state of decomposition, and the absence of distinct evidence of violence, I am unable to give an opinion as to the cause of death.

I have, &c.,

(Signed) A. SIMPSON, M. D.,
C. A. Surgeon.

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Case of
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Case of
CHUTTUR
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The evidence of Dr. A. Simpson, Civil Surgeon of Tirhoot, in the case of Musst. Sheoranee, &c., versus Suboor Thakoor and others, taken on oath before F. Tucker, magistrate of Tirhoot, this 31st day of May 1853.—

Question.—You state in the 3rd paragraph of your report on the examination of the body of Musst. Busree, that “had strangulation been caused by pressure there, (*viz.*, the throat,) with a bamboo, in the recent state I would have expected to find more or less extravasation of blood” from this, can you positively state that strangulation did not take place, or cause death?

Answer.—In a recent state, had much violence been used in causing strangulation, I would have expected to find some extravasation of blood under the skin, but the decomposition in this case was such, that had extravasation to some extent been caused, it would have been effused by the putrefactive changes, the body having been a week interred before inspection, so that I cannot positively state that strangulation had not been the cause of death.

(Signed) A. SIMPSON, M. D.,
C. A. Surgeon, Tirhoot.
 (Signed) F. TUCKER,
Magistrate.

To F. TUCKER, ESQ.,
Magistrate of Tirhoot,

Muzzufferpore, 27th May 1853.

SIR,—I have the honor to report to you, that I examined this afternoon the body of a woman sent for inspection, *viz.*, Munhuree.

The body was so much decomposed, that it appeared to have been interred at least a week; the skin was of whitish brown parchment colour, and the flesh becoming dried on the bones, and the fat, &c. converted into a dipocese.

I did not observe any mark of violence on the body; the integuments of the neck being on a similar state with the rest of the body, and no extravasation of blood in the cellular tissues or among the muscles of the neck.

The internal organs were too putrid to form an opinion as to their healthy condition or otherwise. There were four or five hard fibrous tumours (from the size of an orange to a walnut) attached to, and growing from, the ovaries (appendages to the womb.) The deceased was not pregnant, and from the existence of the above tumours, I should consider she had been barren for some years.

From the state of decomposition, I am unable to form an opinion as to the cause of death.

I have, &c.,
 (Signed) A. SIMPSON, *C. A. Surgeon.*

The evidence of Dr. A. Simpson, Civil Surgeon of Tirhoot, in the case of Musst. Sheorance and others, versus Suboor Thakoor and others, taken on oath before F. Tucker, Magistrate of Tirhoot, this 31st day of May 1853.

Question.—You state in your report of the examination of the body of Musst. Munhuree, that from the state of decomposition you were unable to form an opinion as to the cause of death; if therefore strangulation had actually taken place, could you have detected it?

Answer.—In the recent state I could have detected it, but the state of decomposition was such in this case, that unless great violence, so as to cause extensive extravasation of blood, or laceration of the structures of the neck had been caused, I could not have detected strangulation; and as I did not discover such, I am unable to say whether strangulation was the cause of death or not.

(Signed) A. SIMPSON, M. D.,
C. A. Surgeon.

The witnesses to the mofussil inquest on the bodies deposed, that one hand of the body of Musst. Busree had been eaten by a jackal, but owing to decomposition, no other marks were visible. The body, however, of Musst. Munhuree exhibited a mark of a *lattee* on the throat, the eyes and nose being sunk, the hair of the head having fallen off, and the body being generally decomposed and swollen.

All the prisoners have all along pleaded, as they did in this court, *not guilty*, and the defence they set up was their having heard that the prosecutors—some of them acting in collusion with the witnesses Buhoree and Jankee Dosad, had poisoned the deceased women, and all (excepting Busraj Chowdree) likewise pleaded an *alibi*.

On behalf of the four prisoners referred, sixteen witnesses were entered in the calendar, of whom (the prisoners themselves declining to examine more) eleven were examined for the defence. Not one of them, however, knew or said any thing in favor, or in exculpation of the prisoners.

The *futwa* of the law officer declaring the crime of wilful murder, not established against any of the prisoners, convicts, the four under reference, of being accomplices in the wilful murder of Mussts. Busree and Munhuree, deceaseds, and pronounces them liable to severe punishment (*akoobut shudeed*).

Although not noticed in the *futwa*, I may observe that though the two eye-witnesses are brothers, that they only witnessed the murder of the women, and that there are some discrepancies of dates between the statements of the male prosecutor and the witnesses; yet in regard to the actual

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murder, I have found nothing on the record sufficient to affect the general credibility of the testimony of the two eye-witnesses. Neither have the prisoners themselves urged nor established any thing to invalidate their evidence. Considering accordingly, that the proof adduced, ocular and circumstantial, satisfactorily establishes the guilt of the prisoners to the extent stated by the law officer, I concur with him in the conviction of them all as accomplices in the wilful murder of Mussts. Busree and Munhuree, deceaseds; and viewing the case as one of great atrocity and the crime as characterized by a planned, pre-meditated, and deliberate intention to take the lives of their deceased relatives, without sufficient justifying or extenuating provocation, I am of opinion that the law will not be vindicated by the infliction of a less punishment than perpetual imprisonment. I beg accordingly to recommend, that the prisoners be sentenced to imprisonment for life, with labor, in transportation.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The chain of evidence against the prisoners is well connected and complete. It is proved that the unfortunate women fled from home from fear of violence at their hands. Phutttoo Rae, to whose house they had gone, and Jankee Rae swear that about an hour after nightfall, Lutchmun and Busraj came there and took the women away. Somewhat later on that same night, according to the statements of Buhoree Dosad and Jankee Dosad, which have been consistent throughout, they were put to death; the woman Munhuree by Suboor and Busraj, and the woman Busree by Lutchmun and Sree Thakoor. Strong corroborative evidence of the truth of this statement is furnished by the testimony of Seetah Gorait, who was keeping watch at the place where the bodies were supposed to be interred. He swears that during the night, Suboor and Lutchmun bound him and led him away to a distance, while the other two prisoners and others came and exhumed the bodies and took them away. Marks of blood and other traces of the murder were also found on the spot. On the trial the prisoners all say, that the women were poisoned by the prosecutors and other relations, but no mention of this was made by them when first examined by the darogah, and the witnesses cited by them give no evidence in the slightest degree exculpatory.

The witnesses, Buhoree and Jankee, attracted by a scream, seem to have arrived on the spot only just in time to witness the completion of the murder. Although they only saw the murderers pressing the necks of their victims with *lattees*, it is possible that other means may also have been used for effecting their purpose. I concur in the conviction, and had

there been any evidence to show that any of the prisoners had been more active in the murders than the others, I should have felt it my duty to propose capital punishment. Under all the circumstances, however, and with reference to the suspicion arising in the proceedings, that the murderers were effected with the aid or connivance of all the relations, I accede to the recommendation of the sessions judge, and sentence the prisoners to be imprisoned for life, with labor and irons, in transportation beyond sea.

PRESENT :
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT
versus
CHOONEERAM DUTT.

CRIME CHARGED.—Wounding with intent to murder in having wilfully and knowingly severely wounded witness No. 1, with a *kataree* with a view of taking his life, or doing him some grievous bodily harm.

Committing Officer.—Moulvee Gholam Sufdar, law officer (exercising powers of a magistrate) of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 11th August 1853.

Remarks by the sessions judge.—This case originally came on for trial, on 17th June, and was remanded for further inquiry, and that the commitment might be made agreeably with Regulation XII. of 1829.

It is in evidence that the witness No. 1, Sreenath Dass, was desired by the witness No. 10, Burmo Moe, to proceed to the spot, where the ceremony of cremation was performed and to bring therefrom some ashes; that accordingly accompanied by the prisoner, he went to the spot, and whilst in the act of making obeisance and picking up the ashes, the prisoner inflicted some severe wounds on him with a *bill*, and then ran away; when Sreenath recovered his senses, he crawled to the door of the house of the witness No. 6, Punchanund

Sreenath in his evidence before the law officer, assigned a different cause to that which he gave before the darogah and this court for going to the burning-ground. His motive was clearly to avoid implicating the woman Burmo Moe whose family is respectable and who naturally dreaded the scandal that would arise from her exposure.

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DUTT.Prisoner
convicted of
wounding with
intent to mur-
der and sen-
tenced to im-
prisonment for
fourteen years.

Coomar, about two bee-
gahs distant, and called
for assistance. The latter,
after giving him some
water, took him to his
home. The prisoner
pleads *not guilty*;
throughout the investi-

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DUTT.

gation and in this court sets up an *alibi*, which he fails to substantiate. The proof of the prisoner's identity with the person who inflicted the wounds, principally rests on the evidence of Sreenath. This, however, is so clear and consistent throughout, in respect to the prisoner's recognition, and is so strongly corroborated by circumstantial evidence, as to leave no doubt in my mind that the prisoner is the party who committed the assault.

Sreenath Dass, first gave his evidence, when (as he thought, and as others must have also believed, who saw the wounds) he was in *articulo mortis*, and could not, it is reasonable to suppose, have had any motive for stating what was untrue, or in implicating an innocent party. The discovery of spots of blood and the cloth belonging to the prisoner, at the *burning-ground*, the fact of Sreenath's being seen in his company shortly before the assault was committed, and of the prisoner's absconding immediately after and never appearing again in his village till he was arrested in April 1853, are all circumstances corroborative of Sreenath's testimony. The motive that instigated the assault was no doubt revenge, and the intent, with reference to the weapon used and wounds inflicted, was indubitably to take life.

The witness, Sreenath stated in the mofussil and repeated his statement in this court, that both he and the prisoner had for some time carried on an intrigue with the witness No. 10, Bruno Moe, a widow residing in the same village; that on the afternoon, previous to the assault, he had met Burmo Moe on the road, who desired him to come to her house at night. He did so, and she then told him that to secure her affections, he must apply a charm made of the ashes of the dead, and that he must go to the spot where bodies were usually burnt and secure them. She also suggested he should not go alone, but take the prisoner with him. The prisoner was accordingly summoned and both parties went to the *burning-ground*, where the assault, above described took place. The witness Burmo Moe, denies all knowledge of these circumstances, except having heard that Sreenath had been wounded, but they are corroborated by the evidence of the prisoner's father, Mooktaram Dutt, (witness No. 11); Burmo Moe's reluctance to state what she evidently knows, and to admit the existence of an improper intimacy with either Sreenath or the prisoner, arises, no doubt, from a desire to protect the character of her relations from the scandal, which the publicity of such an intrigue would necessarily create.

The character of the wounds and of the weapon used, prove the murderous intent of the assault. The medical officer, in his evidence, states, that the instrument used must have been a

sharp-cutting one, probably a *bill*; that the wounds on the shoulder, across the face and left fore-arm, are very severe and must have placed Sreenath's life in the utmost jeopardy. Sreenath was under treatment in the hospital for about five weeks, and but for the care there bestowed on him, his life must have been forfeited.

The nature of the wounds, though they have now cicatrized, can still be clearly perceived; that on the shoulder has left a deep hollow, large enough to contain two fingers; that across the face shows that the nose was severed in two, and a deep cut inflicted on the cheek below it; and that on the fore-arm shows that the weapon penetrated through all the muscles to the bone. From the appearance of the wound on the shoulder, it is quite evident that the striker's aim was at the back of the neck, and there can be no question, I think, that if the weapon, whatever it was, had fallen where intended, it must have severed the vertebrae of the neck and death would have been instantaneous.

The assessors declare the prisoner *guilty* of the charge preferred against him. I

Vide analogous case, Nizamut Adawlut Report, Vol. IV., page 59.
Government,
versus
Harro Chunder Chuckerbutty,
20th July 1831.

I concur in this finding, and accordingly recommend that the prisoner be sentenced to imprisonment for life in transportation.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—I concur with the sessions judge in convicting the prisoner of the crime charged. He was named by the wounded man, almost immediately after the occurrence, to the witness who assisted him home, and his cloth was found on the spot, where the attack was made. These circumstances, together with his disappearance from the village so immediately afterwards, leave no doubt of the truth of the wounded man's statement. It is equally clear that murder was intended, as the wounds were most severe, and evidently aimed at parts of the body where they were most likely to prove fatal; the motive of the assailant was no doubt to get rid of the complainant, who interfered with his own intercourse with the woman alluded to.

The sessions judge has sent up the case for a more severe sentence than he is competent to pass, and cites as a precedent the case of Government *versus* Hurrochunder Chuckerbutty, at page 59 of Vol. IV. of the Nizamut Reports, but in that case, the sentence of imprisonment for life was apparently passed in consequence of the prisoner having attacked and attempted to murder two persons at the same time. I do not think the present case

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is of the same aggravated nature, or indeed that it is distinguishable from others of its class, and I therefore see no reason for enhancing the punishment prescribed by Regulation XII. of 1829. I therefore sentence the prisoner to imprisonment for fourteen (14) years in the zillah jail with labor.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

NURSING KOILAH,

versus

GUNGA PATUR (No. 17), GURRA MISREE (No. 18),
NATH BHOO MIJ (No. 19), BOLEE NAIK (No. 20),
ROGHOO KASEE (No. 21), RASOO NAIK (No. 22),
AND KOTEE NAIK (No. 23.).

MIDNAPORE.

1853.

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Case of
GUNGARAM
PATUR and
others.

Seven prisoners convicted by the sessions judge of dacoity and sentenced to seven years' imprisonment. In appeal one prisoner was acquitted, but the sentence on the others confirmed.

CRIME CHARGED.—Prisoners Nos. 17 to 23, 1st count, with having committed a dacoity in the house of the plaintiff and plundered property valued at rupees, 69-14-3 therefrom; - 2nd count, with aiding and abetting in the above crime.—Prisoners Nos. 17, 18, 19 and 20 on a 3rd count, with knowingly receiving and having in their possession property acquired by that dacoity.

CRIME ESTABLISHED.—Dacoity attended with plunder.

Committing Officer—Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 10th May 1853.

Remarks by the sessions judge.—On the night of the 15th March, the house of the prosecutor was attacked by a gang of armed dacoits and plundered of property to the value of company's rupees 69-14-3. The hue and cry was raised by the inmates of the house and the villagers came to their assistance, but before they arrived the dacoits effected their escape. Notice was immediately given at the thannah and the darogah proceeded to the spot, but without gaining any traces of the robbers; he however communicated with the thannadar of the neighbouring jurisdiction, which office in that part of the country is vested in the zemindar. He, the zemindar, deputed his police to investigate the matter, and on the 24th March a phareedar, witness No. 1, Kirpasindoo Adhikaree, reported to the Government darogah of Rynoo Bundar, that he had obtained a clue to the robbery and requested his immediate presence. The witness No. 1 deposes, that in seeking to discover the dacoits, as directed by his superior, he visited the village of Essaneeah and accidentally fell in with prisoner No. 17, and observing that he had scars on his arm and head of recent wounds, he inquired how

he had received them. His replies being evasive and unsatisfactory, he questioned him more closely and at length elicited from him a confession, that he and several others, whose names he mentioned, had robbed the prosecutor's house, and that the property they had obtained had been divided amongst them. The prisoners Nos. 18 to 22, were then arrested, and they all, with the exception of the prisoner No. 20, confessed to the dacoity, and various articles of property were discovered in the houses of prisoners Nos. 17, 18, 19 and 20, which the prosecutor identified as part of that stolen from him. The prisoner No. 23 eluded the pursuit of the police till 26th March, when he was arrested by the burkundauze who was bringing the other prisoners to the magistrate at the sudder station ; the latter pointed him out as their accomplice and the man the police were in search of. Before the magistrate he, as also the prisoners Nos. 17, 18, 19, 21 and 22, confessed. In this court they all plead *not guilty* and set up *alibis* in defence which they altogether fail to establish. The confessions are consistent in all main features throughout, and they are fully corroborated by the evidence, oral and circumstantial, and there is no reason to doubt the truth of what they (the prisoners) depose. The prisoner No. 20, Bolee Naik, denies his guilt from the first, but he is implicated in every confession; two articles of property were found in his house which the prosecutor identifies and which the prisoner denies to be his; he certainly pleads that the articles were put into his house when he was not present, but his bare assertion opposed to the strong evidence against him can avail him nothing. The proof against the whole seven prisoners is, in my opinion, conclusive, and they are accordingly sentenced as indicated in the statement. The police of the zemindar, especially Kirpasindoo Adhikaree and Roop Deqkhit Sirdar are deserving of commendation and reward, for their activity and zeal in tracing the perpetrators of the robbery, and the magistrate has been directed to give such reward as he may deem adequate to the services rendered by them, under Regulation XVI. of 1810; their conduct is in marked contrast to that of the Government darogah at Rynoo Bundar, who satisfied himself with arresting a few influential parties in the neighbourhood of prosecutor's dwelling, and this he did probably more to serve his own ends than with a view to trace the thieves of whom he reported to the magistrate, he could obtain no clue whatever.

Sentence passed by the lower court.—Seven (7) years' imprisonment each, with labor in irons, and to pay a fine of rupees 64-3-4 under Act XVI. of 1850, the estimated value of property stolen and not recovered.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes).—The grounds of Bulee Singh's conviction are that

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TUR and
others.

he is named in the confessions of all the prisoners, who confessed, and two pieces of cloth were found in his house, which *one of the prisoners* said was part of the stolen property. Bulca Singh however denies any participation in the robbery and all knowledge of the articles found in his house. I think this part of the proof against him very weak and he must be acquitted.

All the other prisoners confessed and repeated their confessions to the magistrate, some of them giving up part of the stolen property ; the conviction must stand against them all, and I see no reason to interfere with the sentence passed on them.

PRESENT :

SIR R. BARLOW, BART., Judge.

GOVERNMENT PLEADER AND MOHABEERPER-

SHAD,

*versus*HUREEHUR TEWAREEA (No. 7), AND CHUTRO TE-
WAREEA (No. 1.)

SARUN.

1853.

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Case of
HUREEHUR
TEWAREE
and another.
Two prisoners
convicted as
accomplices in
culpable ho-
micide and
sentenced, one
to five years'
imprisonment,
the other, a
boy, to one
year's im-
prisonment. Ap-
peal rejected.

CRIME CHARGED.—Wilful murder of Samoodheelal.

CRIME ESTABLISHED.—Both prisoners being accomplices in the culpable homicide of Samoodheelal.

Committing Officer. Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on 16th May 1853.

Remarks by the sessions judge.—This is a case of culpable homicide, in which both the prisoners tried were clearly concerned, and in which the deceased met his death from their violence caused apparently by ill-will, arising out of his having improper intimacy with the mother of Hureehur. It appears that the deceased, who had for some years been intimate with Musst Bedmanee, the mother of the elder prisoner, having gone to her house on the evening of the day in which he was killed, was set upon after he had left it by the two prisoners, and a man named Chuthurdharee, who so beat him, that he died in consequence of the injuries received. The magistrate seems to think that they laid in wait for him, but there is no proof of this, neither is it known whether any words or abuse passed between them before they began to beat him, or at whose hands he received the fatal blow, but still as the man was unarmed it was clearly a cowardly attack. Both the prisoners plead *alibis* and call witnesses who depose to them, but I have myself no doubt of their guilt, and as the moulvee also convicts them, I have, in

concurrence with his *futwa*, sentenced them as noted above, giving the last prisoner who is a youth of apparently some 12 years of age (though intelligent and clever) only a slight punishment in consideration of his tender years.

Sentence passed by the lower court.—Prisoner No. 7, to be imprisoned with labor and irons for a period of five (5) years from 16th May 1853; prisoner No. 1, to be imprisoned without irons for a period of one (1) year from the above date, and to pay a fine of fifteen (15) rupees within one month, or in default of payment with such labor as he is able to perform.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—It is clear from the evidence of the eye-witnesses and also from that of the prosecutor and Rujonundun, to whom the deceased stated, on the spot, that he had been assaulted by the prisoners; that he, deceased, was so much disabled, by the injuries he received at the hands of the prisoners, that he could scarcely reach his house close by, and he died the next morning, as appears from a letter addressed to the assistant magistrate, from extravasation of blood and fracture of the skull. The medical officer was examined on oath before the magistrate, and was asked merely whether it was his report, to which he replied, yes. The medical officer should have been called upon to give the details on oath, which his report set forth. He was not brought before the sessions court, and the omission might, under other circumstances, have been fatal to a conviction. The state of the deceased, however, from the moment he was assaulted to the moment he expired, is fully established by the evidence on the record. The prisoners plead *alibi*, but the witnesses for the defence were discredited by the sessions judge and the law officer. I see no reason for interference with the sessions judge's sentence.

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Case of
HUREEHUR
TEWAREE
and another.

PRESENT:
J. R. COLVIN, Esq., Judge.

GOVERNMENT

versus

LUCKHUN CHOWKEEDAR (No. 1), ECHARAM BAROOI CHOWKEEDAR (No. 2), DOMUN HAJRA CHOWKEEDAR (No. 3), AND JUGGUNNATH CHOWKEEDAR (No. 4).

NUDDEA.

—
1853.

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Case of
**LUCKHUN
CHOWKEE-
DAR and
others.**

Four pri-
soners con-
victed of per-
jury and sen-
tenced to three
years' impris-
onment. The
Court declined
to mitigate
the sentence
as proposed
by the sessions
judge.

CRIME CHARGED.—Prisoner No. 1, perjury in having on the 23rd November 1852, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of zillah Nuddea, that "in the month of Assin 1259 B. S., as I and Peeran Mothoor, Juggunnath Domun and Echaram Chowkeedar, were going through the Meera village with Ramdyal Ghose, darogah, to apprehend the offenders in the Badamgatchee cattle-theft case, on arriving near the cutcherry of Eshan Chunder Roy, I saw under the *peepul* tree about 30 clubmen, and within the cutcherry enclosure about 60 clubmen, and sitting with them Rajib Roy and Manick Mookerjea, farmer of Eshan Chunder Roy; moreover along side the *peepul* tree, were leaning about 100 clubs. On the darogah accosting the people collected and inquiring the cause of so large a collection, and learning from them that they are Eshan Baboo's servants, he directed their arrest, and in our attempting to do so, the said Rajib Roy and Manick Mookerjea, came out of the house and ordered the *latteals* to strike the darogah, on which they struck the buxee (mohurir) two blows, and pierced the darogah with a small spear, &c.;" and in having again when the said Manick Mookerjea, was present on the 17th of March 1853, intentionally and deliberately deposed under a solemn declaration made instead of an oath, before the said magistrate of Nuddea, that "when I saw the clubmen, I did not see Manick Mookerjea," such statements being contradictory of each other, on a point material to the issue of the case. Prisoner No. 2, perjury, in having on the 23rd November 1852, intentionally and deliberately deposed under a solemn declaration taken "instead of an oath, before the magistrate of zillah Nuddea, that about 3 o'clock on one day in the month of Assin last, I and Luckhun and other chowkeedars were going through the village of Meera with Ram Dyal Ghose, police darogah, I saw at the foot of the *peepul* tree near Ishan Baboo's cutcherry enclosure about 60 or 70 clubmen, and sitting with them in the said cutcherry, Manick Mookerjea and Rajib Roy, and

leaning against the tree above alluded to about 100 clubs. The darogah on questioning who and what was the great collection of men, and on learning that they were Eshan Baboo's servants, gave orders for their arrest ; on our attempting to act up to the darogah's orders, the said Rajib Roy and Manick Mookerjea, rushed forward and shouted "*mar sala digka,*" and, on the darogah intimating to them that he was the police officer, the clubmen struck the buxee two blows, &c. ; and on having on the 17th March 1853, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the said magistrate of Nuddea, that "I never saw Manick Mookerjea, and never said that I did;" such statements being contradictory of each other on a point material to the issue of the case. Prisoner No. 3, perjury, in having on the 17th March 1853, when Manick Mookerjea, a defendant, previously named by him as a witness, was confronted with him, deposed under a solemn declaration taken instead of an oath, before the magistrate of Nuddea, that "I do not recognise the man Manick Mookerjea, and did not see him there—" (referring to his previous deposition,) such deposition being false, and having been intentionally and deliberately made on a point material to the case. Prisoner No. 4, perjury, in having on the 17th March 1853, when Manick Mookerjea, a defendant, previously named by him as a witness, was confronted with him, deposed under a solemn declaration taken instead of an oath, before the magistrate of Nuddea, that "the Manick Mookerjea" whom I named is not the Manick Mookerjea present, such deposition being false, and having been intentionally and deliberately made on a point material to the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 3rd June 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed for perjury and pleaded *not guilty* to the charge.

The perjury as regards the prisoners, Luckhun Chowkeedar, and Echaram Chowkeedar, consists in their having intentionally and deliberately, under solemn declaration, made contradictory statements, and that in the case of the prisoners, Domun Chowkeedar and Juggunnath Chowkeedar, in their having in like manner deposed falsely on a point material to the case.

The evidence against the former is the verification of the two inconsistent statements made by them before the magistrate, and that against the latter the same proof with the

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addition of admission of crime, and the attestors are the parties who took down the contradictory affirmations in the magistrate's court.

As the prisoners are ignorant persons, utterly insensible to the moral obligations of an oath, and as the perjury was not of malicious intent, but rather the result of intimidation and fear, I would venture to recommend a mitigation of six (6) months on the punishment of three (3) years' imprisonment, with labor, passed on the prisoners, and solicit the Court's confirmation of the sentence.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin.)—The guilt of the prisoners is clear. They have given in petitions to this Court, which are merely vague declarations, that their statements were loosely or incorrectly taken down. I convict them of perjury, but see nothing in the circumstances on the record which would warrant a reduction of the sentence below imprisonment with labor and irons for three (3) years, that being the minimum term of punishment specified for all but cases of very special mitigation in Clause 2, Section IX., Regulation XVII. of 1817. Sentence will issue accordingly.

PRESENT:
J. R. COLVIN, Esq., Judge.

GOVERNMENT AND MADHUB CHUNDER GHOSE,
versus

**NARAIN BAGDEE (No. 6), POTEET BAGDEE (No. 7),
SREEMUNT BAGDEE (No. 8), AND PREM CHAND
CHUCKERBUTTY (No. 9).**

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, attended with wounding of Nuffer Chowkeedar, and 2nd count, knowingly receiving portions of plundered property.

CRIME ESTABLISHED.—Dacoity with wounding, and knowingly receiving portions of plundered property.

Committing Officer—Baboo Kissory Chand Mitter, Deputy Magistrate of Jehanabad.

Tried before Mr. J. S. Torrens, sessions judge of Hooghly, on the 3rd June 1853.

Remarks by the sessions judge.—The prisoners all plead not guilty. They are committed on the evidence of plaintiff's servant, (No. 1,) and other witnesses, (Nos. 2 and 3,) who deposed to having recognized them at the time the dacoity was committed. The plaintiff was himself absent from home at the time, but deposes with precision, and the fullest appearance of truth, to the property discovered in the houses of the defendants after the dacoity. This property they claim as their own, but the evidence adduced to prove this, and in refutation of that which shows it to have been the plaintiff's and plundered from his house, altogether breaks down. I have therefore convicted them of the charges, sentencing the prisoner No. 6, who is a chowkeedar, to fourteen (14) years, with labor and irons, and the others to twelve (12) each.

HOOGHLY.

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Case of
NARAIN BAG-
DEE and
others.

Four pri-
soners con-
victed of da-
coity with
wounding by
the sessions
judge. In ap-
peal one was
acquitted, the
evidence of re-
cognition not
having been
brought for-
ward against
him till two
days after the
crime had
been com-
mitted.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoners have appealed, stating enmity on the part of the witnesses for the prosecution, from circumstances to which they made no reference on the trial. The case is one resting entirely on the credit due to the recognition by the three witnesses, Roopchand Bagdee, Nuffer Chowkeedar and Susteeraam Bagdee; for the evidence for the prosecution as to the articles of property is met by the evidence for the defence, which is generally very clear and strong, excepting as to the brass vessel for holding water (*kulsee*) found in the house of the prisoner No. 9. The three prisoners Nos. 6, 7 and 9, were named by the witness No. 1 to the darogah on the day after the dacoity, as having been recognized by him at the time of the attack, and he also then referred to the witnesses Nos. 2 and 3 as having come up on the alarm. These too

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DEE and
others.

named the prisoners Nos. 6, 7 and 9, when they were examined by the darogah.

The prisoner, No. 8, Sreemunto Bagdee was not named by the witness No. 1, on the 16th March, but only on the 18th March, after he, with a number of others, had been apprehended on suspicion, and was shown to that witness. There must hence be special doubt as to the recognition of this prisoner. The witness No. 3, also named this prisoner incorrectly before the magistrate. I am not satisfied with the evidence as it affects him. I therefore acquit him, but do not see ground to warrant interference with the conviction and sentence on the other prisoners Nos. 6, 7 and 9, by the sessions judge, who has had the advantage of hearing the statements of the witnesses as given on the trial.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT AND ANOTHER,
versus
 HAVIZOULLAH KAZEE.

RAJSHAHYE.

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HAVIZOOL-
LAH KAZEE.
Prisoner
convicted of
aiding and
abetting in a
riotous attack
and sentenced
by the sessions
judge to two
years' impris-
onment. Ap-
peal rejected.

CRIME CHARGED.—Riotously attacking and plundering the houses of the co-prosecutor's employers.

CRIME ESTABLISHED.—Being present, aiding and abetting in the riotous attack with others.

Committing Officer—Mr. F. Beaufort, officiating joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 22nd July 1853.

Remarks by the sessions judge.—This trial was supplementary to one held in December 1851, when the following remarks were made in statement No. 6 for that month, regarding two prisoners, then tried and sentenced.

"This was a very aggravated case of plundering the houses of the prosecutor's employers at night, and in every respect the attack was similar to a robbery by open violence. With regard to the carrying off a person by name Khowaj, the evidence was not so clear, and no search had been made for him, or the property taken, although by the orders* passed by the Superior Court in the case of Radhamohun Paul and others, on the 7th of September 1849, search might have been made for the property. It would appear that the Sandys had been employed at the Hazleebut Indigo Factory, but have

* From Register of the Nizamut Adawlut to the sessions judge of Rajshahye, No. 1091, under date the 7th September 1849.

The Court, having had before them your letter No. 47, dated 14th ultimo, with the joint-magistrate of Pubna's explanation, that no search is

since been discharged, and because they relinquished a *jote* situated within an *ijara* held by the factory, this violent and unjustifiable attack was made on their houses and property."

The present trial was held with a jury, the same who sat on the preceding trial. The evidence for the prosecution as to the night attack was direct. The prisoner's defence was that, he was employed at Banepore Factory and not at Hazlee-but ; that he was ill at the time and could not have gone, and that he had not been named before, either at the thannah or in the joint-magistrate's court, and was now implicated for an object, *i. e.*, to get money. Some of the witnesses for the defence said, he was ill from *cholera* and one from fever. The jury were then told that all they had to decide was if the charge was proved, or as pleaded by him, if he was too ill to leave his house, or (as he afterwards alleged) from his left arm being dislocated, and which the native doctor confirmed, it was likely he would be engaged in such an attack. The jury then brought in a verdict of being present and aiding and abetting in the attack. After going through the thannah and soujdaree papers, and finding the prisoner was named throughout, I, in concurrence with the verdict, sentenced him as herein stated.

The former trial in appeal was reviewed by the Court, and will be found at page 494, of Nizamut Adawlut Reports for 1852.

Sentence passed by the lower court.—To be imprisoned without irons for the period of two (2) years, and to pay a fine of 100 Rs., on or before the 22nd August 1853, or in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The several inconsistent pleas of the prisoner are unworthy of notice. The attack in which he bore a part occurred on the 8th of September. Information was given at the thannah on the 9th, and on the 10th, the depositions of the prosecutor and the witnesses, by whom he was named, were taken, so that the assertion, that he is now implicated with a view to extort money, is absurd. The sentence is confirmed.

customary for plundered property, direct me to inform you that they do not consider any general rule should prevail either directing or prohibiting search in such cases, but they are of opinion that, in particular instances, the recovery of plundered property should be attempted equally as that of stolen property, both for the indemnification of the owners and to obtain better proof against the perpetrators of outrages. The Court, therefore, think that there may be cases in which, in the exercise of a sound discretion, the police and the joint-magistrate endeavour to recover plundered property, strictly, however, under the rules for the recovery of stolen property prescribed by Regulation XX, of 1817.

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Case of
HAYIZOOL-
LAH KAZEE.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT,

versus

CHUNDER PARAMANIK.

PATNA.

—
1853.

August 20.

Case of
CHUNDER
PARAMANIK.

Prisoner convicted of fraudulently issuing as true, a document purporting to be a draft of the collector of Patna knowing the same to have been false and fabricated in two cases, and also on a minor count of fraud in both cases, and sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED—Trial No. 7, 1st count, fraudulently issuing as true a document purporting to be a draft, Exhibit A., drawn by the senior assistant commissioner of Tavoy, on the collector of Patna, on the 10th August 1852, and numbered 2 of 1852-53 for rupees 600, in favor of Mr. J. Shum, knowing the same to have been false and fabricated, and 2nd count, fraud in having obtained from the treasury of the officiating collector of Patna the said sum of rupees 600, by means of the above document, knowing the same to have been false and fabricated; 3rd count, fraudulently obtaining from the treasury of the officiating collector of Patna the said sum of rupees 600, by means of the above document. Trial No. 8, 1st count, fraudulently issuing as true a document, purporting to be a draft, Exhibit T., drawn by the senior assistant commissioner of Tavoy on the collector of Patna on the 16th August 1852, and numbered 3 of 1852-53, for rupees 2,516, in favor of Mr. J. Shum, knowing the same to have been false and fabricated; 2nd count, fraud in having obtained from the treasury of the officiating collector of Patna the said sum of rupees 2,516, by means of the above document, knowing the same to have been false and fabricated, and 3rd count, fraudulently obtaining from the treasury of the officiating collector of Patna the said sum of rupees 2,516, by means of the above document.

CRIME ESTABLISHED.—Trial No. 7, 1st count, fraudulently issuing as true a document, purporting to be a draft, Exhibit A., drawn by the senior assistant commissioner of Tavoy on the collector of Patna, on the 10th August 1852, and numbered 2 of 1852-53, for rupees 600, in favor of Mr. J. Shum, knowing the same to have been false and fabricated, and 2nd count, fraud in having obtained from the treasury of the officiating collector of Patna the said sum of rupees 600, by means of the above document, knowing the same to have been false and fabricated. Trial No. 8, 1st count, fraudulently issuing as true a document purporting to be a draft, Exhibit T., drawn by the senior assistant commissioner of Tavoy on the collector of Patna, on the 16th August 1852, and numbered 3 of 1852-53, for rupees 2,516, in favor of Mr. J. Shum, knowing the same to have been false and fabricated, and 2nd count, fraud in having obtained from the treasury of the officiating collector of Patna the said sum of rupees 2,516, by means of

the above document, knowing the same to have been false and fabricated.

Committing Officer—Mr. F. J. Cockburn, joint-magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 17th May 1853.

Remarks by the sessions judge.—Trial No. 7.—The collector's testimony to the receipt of a letter, dated 15th January, in the current year, from the senior assistant commissioner at Tavoy, stating that no draft had been drawn in the Patna treasury during the two years prior to the date aforesaid, is sufficient as to the draft being false and fabricated.

The same witness proved the receipt by him from the accountant's office of two drafts drawn by the aforesaid officer, which, with the letter of the assistant accountant to the Bengal Government, in which they were enclosed, were put on the record of the trial. The draft, which is the subject of the trial, differed entirely from the genuine ones, which are printed, being written and containing grammatical errors, and bearing a signature differing in the initial letters, and in no way resembling the signature on the drafts and letter produced. The testimony of the collector, the deputy collector, Mr. Knott, and the head clerk, Mr. DeSouza, prove the presentation, examination and issue of a warrant for payment of the amount of the draft. Bolakee Lal proved the warrant, stating that it was drawn out by him from particulars given to him by the prisoner in the course of his duty; and Mudun Mohun, the treasurer, several purkheas, and the witness Doorgah Dass, nephew of the prisoner, proved the payment of the amount of the warrant to the prisoner and the said witness, Doorgah Dass, and the signing of the acknowledgment on the back of the warrant by the latter. Doorgah Doss deposed, that the prisoner employed him to receive and take away the money from the treasury, telling him a lady had requested him to draw the amount of a hoondie for her; and Byjnath, one of the purkheas, deposed, that the prisoner told the same story, when receiving the money, to the treasurer. Mr. DeSouza aforesaid, deposed, that on the occasion of the payment of another draft in favor of Mrs. Drummond, the party to whose order the present one is endorsed, which was presented a few days afterwards, the prisoner volunteered to him the information that Mrs. Drummond had written to him, authorizing him to realize several drafts for her. From the testimony of Prussono Coomar, a clerk in the collectorate, it appears that before the payment of the draft in this case, the prisoner had delivered up to him a letter accidentally discovered in prisoner's drawers by witness, purporting

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to be written by Mrs. Drummond to the address of Mr. Knott, concerning the exchange of several drafts payable to her by promissory notes. This letter which the witness gave to Mr. Knott was brought forward and proved on the trial. The proof, therefore, against the prisoner, is complete. He had no defence to offer except that Doorgah Dass had brought him the draft, saying that he had got it from the servant of a lady, who requested him to receive the money, while he went to the city to make some purchases. The law officer convicted the prisoner of the charges set forth in the statement, in which conviction I fully concurred. The sentence was passed in the next case.

Trial No. 8.—The collector's testimony to the receipt of a letter, dated 15th January last, from the senior assistant commissioner at Tavoy, stating that no draft had been drawn by him on the Patna treasury during two years previous, and also to the receipt of two genuine drafts drawn by the aforesaid officer from the assistant accountant to the Government of Bengal, the want of resemblance to the said draft in question, together with the want of resemblance between the signature of the said draft, and those of the letters and genuine drafts, sufficiently prove that the draft is false and fabricated. The testimony of the collector and his subordinates proves the presentation of the draft for payment, and the drawing out of a warrant for its payment; and the testimony of the native treasurer and his purkheas, with that of Doorgah Dass, nephew of the prisoner, prove the receipt of the amount of the warrant by the prisoner and Doorgah Dass aforesaid. Mr. DeSouza spoke to the prisoner having voluntarily informed him, when payment was about to be made, that this and other drafts had been sent to the prisoner by Mrs. Drummond to be realized for her, and Prosunno Coomar, proved the delivery to him by the prisoner some time before of a letter, accidentally seen by him in the prisoner's drawer, addressed to Mr. Knott, and purporting to be written by Mrs. Drummond on the subject of drafts on the Patna treasury, made payable to her; the proof against the prisoner is complete. In his defence he stated, that Doorgah Dass had shown him the draft, stating that he had received it from the servant of a lady, and that he (the prisoner) had assisted him to draw out the amount without any guilty knowledge and that it had been paid to a person who stated himself to be the servant of the payee. The law officer convicted the prisoner of the charges entered on this statement, and fully concurring in the conviction, I have sentenced the prisoner upon the conviction in this and in the preceding case.

Sentence passed by the lower court.—Imprisonment for seven years, being a consolidated sentence for both offences.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The evidence in these cases shows that the prisoner, Chunder Paramanik, received from the Patna treasury the amounts of two drafts, purporting to have been drawn by the senior assistant commissioner at Tavoy on the Patna collector, but which were subsequently discovered, together with the letters of advice, to be forgeries. Mr. Waller has appeared on the part of the prisoner, in the appeal preferred by him to this Court, and urges, that there is no proof of any guilty knowledge or complicity on the part of his client; that he was merely made a tool of by more culpable and designing parties to receive the money from the treasury, but had no knowledge of the fraud at the time. Mr. Waller then requested that the evidence of Mahadeo Lal might be referred to. This man states, that he received the written receipt for rupees 2,516 from Wuzeer Alee, and gave it to Chunder Paramanik, (the prisoner,) according to Wuzeer Alee's instructions, who told him Chunder Paramanik would procure the amount from the treasury, and was to receive rupees 50 out of it, and deliver the balance to the witness; that Chunder Paramanik took the receipt from him, brought the amount, and took the rupees 50 agreed upon, before delivering the cash to him. This account does not, in my opinion, tend to relieve the prisoner from the charge of guilty knowledge and acquiescence. A man is not likely to have been paid rupees 50 for the mere trouble of presenting a receipt and procuring cash from a Government treasury; but there is other proof of the prisoner's complicity, and of his being mixed up in these draft transactions, namely, his being present when the warrants were prepared in the office and affording information for drawing them up, and his possessing a letter respecting these drafts addressed to Mr. Knott, deputy collector, while there is on his part no proof, whatever to change the complexion of these acts, or give to them even the semblance of innocent participation. I therefore see no reason to interfere with the order passed by the sessions judge, convicting the prisoner of the charge proved against him in these two cases.

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340 CASES IN THE NIZAMUT ADAWLUT.

PRESENT :
J. DUNBAR, Esq., Judge.

BEROO MUNDUL AND GOVERNMENT,

versus

CHOTA BABOO SHEIKH (No. 3), BHEEKOO GHOSE (No. 4), MANIK SHEIKH (No. 5), BUNGSEE GHOSE (No. 6), LOADHI SHEIKH (No. 9), KHEJOO SHEIKH (No. 10), AND SHADOOCHURN GHOSE (No. 11).

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Case of
CHOTA BA-
BOO SHEIKH
and others.

Six pri-
soners charg-
ed with da-
coity acquit-
ted by the
sessions judge,
but ordered
to find secu-
rity for their
good conduct
during three
years, or to be
imprisoned for
that term.

Appeal
rejected.

CRIME CHARGED.—1st count, prisoners Nos. 3, 4, 5, 6, 9, 10 and 11, committing a dacoity on the house of the prosecu-
tor, Beroo Mundul, in which property to the value of rupees Nos. 294-15 was plundered, and 2nd count, prisoners 3, 4, 5, 6, 9, 10 and 11, being accomplices in the said dacoity.

Committing Officer.—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 30th May 1853.

Remarks by the officiating additional sessions judge.—These prisoners are connected with case No. 8 of this month, in which the prisoner, Baboo Sheikh, senior, and four others, were punished without reference to the Nizamut Adawlut. The particulars of the dacoity are detailed in my statement No. 6. The prisoners were among those who were found absent from home on the night of the dacoity, and at whose houses a watch was set by the villagers. Their complicity in the dacoity is distinctly sworn to by the approver witness, and I am much mistaken if they do not form part of an organized gang, for the reasons assigned in the statement above made mention of. If any thing were wanting to confirm this suspicion, and the conviction that they are lawless desperadoes, their insolent and over-bearing conduct during the trial, and their undisguised contempt of authority, abundantly supply the deficiency. They plead nothing in defence save a good name, and make no attempt to prove their presence elsewhere than at the dacoity, and their negative plea is very negatively supported. The proof against them, however, fall short of legal evidence, and I have acquitted them of the charges on which they are indicted; but the moral proof is so strong against them, and the conviction on my mind that they are persons of desperate character and habits so irresistible, that I cannot allow them to go abroad without some guarantee against future mischief at their hands. I have therefore required each of them to find two sureties in the sum of rupees 30 each for good conduct during three years, or in default

to be imprisoned, with labor in irons, for the period, under the provisions of Regulations VIII. of 1818 and III. of 1819. I have made this order to effect all the prisoners except the prisoner Loadhi Sheikh, who resides in another village, on whom no suspicion rests like the others, and whose witnesses pronounce him as bearing a good character and possessed of ample means of living honestly. I have ordered this prisoner's unconditional discharge.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoners are all mentioned as connected with the dacoity in the confession of the approver. They were absent during the night of the occurrence, though marked men; and are regarded by the villagers as men of bad character. Under these circumstances, I see no reason to interfere with the requisition for security.

PRESENT:
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT
versus
HYDER MAHOMED.

CRIME CHARGED.—1st count, with having caused to be prepared counterfeit coin; 2nd count, with having in possession counterfeit coin in his house, and 3rd count, with knowingly possessing instruments for the purpose of counterfeiting coin and pice.

CRIME ESTABLISHED.—Having in possession counterfeit coin in his house, &c.

Committing Officer.—Mr. A. W. Russel, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 20th May 1853.

Remarks by the officiating sessions judge.—This was a simple case of coining. Witnesses Nos. 6, 7 and 8 ascertained that the prisoner was in the habit of coining money, and changing counterfeit coin at the neighbouring *haute*. They therefore gave intimation at the thannah and to the magistrate, who directed the darogah of Rungpore to investigate. He broke into the prisoner's house, and found all the moulds and implements of the trade, besides counterfeit coins. In his defence the prisoner declares the informants conspired against him in consequence of a quarrel, and brings witnesses to prove the quarrel, but the fact of the discovery of all the

his house having been improperly conducted.

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HOMED.

Prisoner
in whose
house moulds,
implements
and counter-
feit coins were
found, con-
victed by the
sessions judge
of having in
possession
counterfeit
coin in his
house.

In appeal
the prisoner
was acquitted,
the search of

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counterfeit coin and implements of coining in his house is established beyond a shadow of doubt, and also the fact of thus attempting to pass bad rupees at the *hauts*.

The jury, Gungapersaud Misser, Gopeenath Roy and Rajkishore Ghose, convict on all the counts. I convict only on the second and third, and sentence accordingly.

Sentence passed by the lower court.—Imprisonment without irons for three (3) years, and to pay a fine of rupees thirty (30), on or before the 19th June 1853, or in default to labor until the fine be paid, or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—An informer having secretly lodged information against the prisoner, the darogah was directed to search the house, and the only proof against the prisoner is, that some moulds and counterfeit rupees were found there. The witnesses to the search say, that they stood at the door while it was conducted by the darogah through his chowkeedars, who found the articles mentioned. The prisoner denied knowing anything about them, and says they had been brought there by his enemies. His witnesses give him a good character. It appears that the search of the house was conducted in a very loose and irregular way ; none of the neighbours were summoned, nor any precaution taken to prevent such articles as those found from being surreptitiously conveyed there. I do not consider the proof adduced satisfactory, and therefore acquit the prisoner. •

PRESENT:
 SIR R. BARLOW, BART., }
 J. R. COLVIN, Esq., } Judges.

POKHUN, MUSST. OOBIA AND GOVERNMENT,
versus

MEGHOO SINGH (No. 10), BHOONDOO SINGH (No. 11), BHOOPUN SINGH (No. 12), BHATOO SINGH (No. 13), AND NARIN SINGH (No. 14).

CRIME CHARGED.—1st count, prisoners Nos. 10 and 11, wilful murder of Bheenuk, deceased, and 2nd count, prisoners Nos. 10, 12, 13 and 14, being accessories after the above fact.

Committing Officer—Mr. F. A. Vincent, deputy magistrate of Barh.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 25th July 1853.

Remarks by the sessions judge.—The particulars of the case are as follows:—Boodhoo Chowkeedar of mouza Mokawan, the residence and zemindaree of prisoners, came early on the morning of the 4th of February to the thannah of Dureepore and deposed, that having heard during the previous evening that Bheenuk Dosad had met with his death in a suspicious manner during that day, he was on the look-out; and late at night, while going his rounds, met a party consisting of Bhoo-pun Roy (prisoner No. 12), and Narin Singh (No. 14), followed by Meghoo Singh (No. 10) and Bhatoo Singh (No. 13), carrying between them the dead body of Bheenuk Dosadin a cloth slung on a bamboo. They were going in the direction of the river, and coming from that of the tal, where Bheenuk had met with his death. Letting three of the party go to their homes, he gave Meghoo and the body in charge to Leelkunt and others, and proceeded at once to give notice at the thannah.

The darogah proceeded to the spot, and on that same day, the 4th of February, reported to the magistrate that he had entered on the inquiry, and sent a *sooruthal* of an inquest on Bheenuk's body. Pokhun Dosad, nephew of deceased, had become accuser, and deposed that his uncle, Bheenuk, was a laborer in Tookun Singh's (father of prisoners Nos. 10 and 11), zemindaree; that on the day before (the 3rd) Meghoo (prisoner No. 10), son of Tookun, came to their house, and said to Bheenuk, "Why dont you cut grass, I will take and kill you in the tal." Saying this he seized and made him go with him to the kerao lands of Aonta (where there is a disputed boundary, and where Bheenuk is said to have been murdered). Pokhun had further heard that morning from Jhumun Dosad, that

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Prisoners charged with wilful murder and other counts acquitted, the direct evidence being suspicious not having been forthcoming until a second inquiry after the darogah who made the first one had been suspended.

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others.

Meghoo and Bhoondoo had beaten and kicked Bheenuk to death ; that they first thought to throw the body into the tal of mouza Aonta, but afterwards hid it in the grass, and at midnight took it in a *garee* to their village, with intent to throw it into the river, when they were stopped by the chowkeedar. The *sooruthal* described only a few unimportant marks and scratches as apparent on the body.

The darogah further, on the 5th February, examined Jhumun Dosad, who deposed to having heard that the body was taken from the tal, but that he knew nothing as to the cause of death. Also, on the 7th February, Musst. Oobia, wife of deceased, who had heard from Gondur Dosad, that her husband had fallen from a *garee* and been killed, said that he was subject to *meergee* (giddiness or fits). Also, on same date, Musst. Boodnee, sister of deceased, who knew nothing about the cause of death, said Bheenuk was at her house on Wednesday (2nd February) ; that on Thursday early she went out, and on returning, found he was gone on that same day (3rd). Meghoo Singh (prisoner No. 10) came running, to say that Bheenuk had died from eating unripe *musoor* ; he (Meghoo) said nothing about his falling from a cart. Also, on same date, Gondur Dosad, nephew of deceased, only knew that his uncle had fallen from a cart in Hurlalpyne, and was killed by the wheel passing over him. Also, on same date, Khugput Gorait and Chea, uncle of deceased, who state the same as Gondur, adding, that deceased was subject to *meergee*. Also, on same date, Chummun, Mudun and Kunhye Goalas, who said they were with Bheenuk when he fell off the cart ; that Bheenuk was on a cart ; they were following about two *russees* behind ; when they arrived near Hurlalpyne saw that Bheenuk had fallen forward ; and that the bullocks had dragged the cart over him ; ran up and found him rolling on the ground, raised and sat him up, and asked where he was hurt ; he pointed to his throat ; he died shortly afterwards ; this was about 10 or 11 A. M. They loaded the cart with grass and took it to Tookun Singh's house, about three *coss* distant, leaving the body where it was ; they told Tookun Singh's women of Bheenuk's death ; this was about 8 P. M.—They heard next day that Meghoo, Bhatoor, Narin and Bhoopun (prisoners) had taken the body to their own house : did not see any one beat Bheenuk.

On the 9th February, the deputy magistrate having received no report since that, dated the 4th February, suspended the darogah and sent the jemadar to prosecute further inquiries.

The evidence taken by the darogah had been entirely confined to the residents of deceased's own village of Mukawun, of which prisoners were the zemindars. The jemadar made his

inquiry on the spot where the murder was said to have been committed, and took evidence of the villagers of Aonta, opposed to prisoners as regards the disputed land.

On the 15th, the jemadar reports, having completed his inquiries, and sends in Gondur, Phoodee and Luchmun, the three eye-witnesses (Nos. 1, 2 and 3,) whose depositions on the spot (11th February), at the foujdaree (16th February,) and before the court, are very clear and consistent : they are to the effect that they were watching their fields within their own boundary of Aonta ; that prisoners Meghoo and Bhoondoo ordered Bheenuk to cut grass on the Aonta lands, which refusing they beat and kicked him ; and on his still refusing took the *sipacee* or bamboo prop of the hackery, and placing it across his neck compressed it till he died. It was then proposed by the Mukawun men to throw the body within the Aonta boundary, at which the Aonta men all cried out objecting ; then the body was taken away, they do not know where, and they all ran away, the Mukawun party pursuing them. They knew nothing of the investigation going on at Mukawun and did not speak on the subject till they were asked : directly the jemadar came to their village to make inquiries, they told him all they knew.

Though from their known enmity to prisoners, I should have much hesitation in accepting these witnesses as sole evidence against the parties accused, I cannot but credit their assertions when backed by the very strong circumstantial proof inseparable from the fact of the secret removal, at the dead of night, of the body of a Dosad by four influential and high-caste zemindars, a fact acknowledged by prisoners (Nos. 10, 12, 13 and 14,) and only glossed over by the very insufficient plea of deceased being their dependant, and none of his own relatives being thereto to undertake the funeral rites.

The deposition of Fyzullah Khan, the native doctor attached to the Barh deputy magistracy, is as follows :—“ I examined the body of Bheenuk, decensed, on the 4th February, the external marks were abrasions of the skin, on posteriors, back and loins, neck and throat much swollen, both eyes bleeding. I opened the body and found the upper part of the chest, as well as the throat, severely injured, as if something heavy had pressed on that region. His death was caused by this injury ; he had an enlarged spleen previous to this, but it was not burst ; the enlargement of the spleen would not have occasioned death. I think the injury in the region of the throat and chest, more likely to have been occasioned by a cart-wheel than by a bamboo pressed on the throat, because in the latter case, the contusion would not have been so extensive.” This is the evidence for the prosecution.

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Meghoo's defence is, that he did not go on the day in question to Hurlalpyne, but remained in his village, making preparations for a marriage in his family ; on this point he names witnesses ; further, that the *gareewans* returning with grass from the pyne told him of Bheenuk's death ; that he went into the village to search for Bheenuk's relatives, but finding none, got Bhoopun, Narin and Bhatoo to go with him to the pyne (distant three *coss*) and fetch Bheenuk's body ; that they brought it in a cloth and put it down in their verandah, and sent Bhoondoo to give notice at the thannah ; attributes the accusation to the known enmity of the Aonta maliks. Bhoondoo denies all connection with, or knowledge of, the matter, and says Pokhun (the complainant,) is at enmity with him on account of disputes occurring through Pokhun's swine trespassing on his (Bhoondoo's) premises. Bhoopun, Bhatoo and Narin acknowledge having assisted with the body, but say that Meghoo told them "Bheenuk had met with an accidental death, and that none of his own relatives being there, we must assist at his obsequies." The witnesses adduced for the defence attempt to prove an *alibi*, but I place no credit in their assertions.

The jury bring in a verdict of *guilty* against all the prisoners, on the charges noted in the calendar, in which I concur.

This case was committed at a former sessions in April last, on a charge of culpable homicide ; but on looking through the nuthee, I considered that the indictment should be for the higher crime and remanded it accordingly. It was at that time otherwise incomplete, from absence of the native doctor and there being no authenticating witnesses to his deposition before the magistrate.

I consider that the charge of wilful murder against Meghoo and Bhoondoo has been established, on the evidence of witnesses (Nos. 1, 2 and 3,) and with regard to Meghoo, on the other strong circumstantial proof above detailed. The opinion of the native doctor has an evident leaning towards the prisoners, but I do not subscribe to his reasoning, as to the space likely to be injured by a bamboo pressed on the throat of one struggling for life. Had the compressed subject been perfectly quiescent the argument might have weight, but we cannot suppose that such was the case in this instance, neither do I think that an empty light cart of the country, passing over a man's chest would have the effect described by the native doctor, or cause death by its mere momentary pressure. With regard to Meghoo, I see no reason why he should not be subject to capital punishment. Bhoondoo, however, though equally liable to suffer death, I would

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recommend to the mercy of the Court, on the score of the evidence against him being single and unsupported by the strong corroborative facts which appear against Meghoo. It will be remembered that Bhoondoo was not one of those concerned in removing the body. Prisoners Bhoopun (No. 12), Bhatoe (No. 13), and Narin (No. 14), are all equally guilty on the 2nd count of the indictment, as accessories after the fact, with the whole circumstances of which (judging from the very remarkable act in which they were engaged) they must have been fully acquainted. I would recommend their being sentenced to imprisonment, with labor in irons, for a term of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. R. Colvin).—The circumstance, which naturally raises much suspicion in this case, is the acknowledged fact that the prisoners, who are Brahmins, should bring home on their shoulders, the corpse of the deceased Bheenuk, a man of the lowest class, a Dosad.

But such suspicion would not, in our opinion, justify conviction alone and unsupported.

An extremely weak case is made out for the prosecution. The evidence of the three eye-witnesses, residents of Aonta, where the murder took place, is not heard of for ten days after the occurrence, though the police were on the spot immediately. At the sessions trial, on the 2nd May, just three months from the date of the murder, statements said to have been made by the eye-witnesses to the police, on the 11th February, were sent in from the mofussil on the requisition of the sessions judge. The integrity of these documents may well be doubted, seeing that, though most material in support of the evidence against the prisoners, they were not placed on the record, nor, so far as we can trace, previously laid before the magistrate. The intimidating order of the 9th February to the darogah, and his suspension in consequence of having failed to discover any proof of the crime, were no doubt in the mind of the jemadar, who then took charge of the inquiry. The alleged statements of the eye-witnesses before him, such as they are, are however, so similar in their very terms, in the order of narration and in their details, that the one might be substituted for the other. Their correspondence is most singular and unaccountable. The witnesses, too, are residents of Aonta, between the proprietors of which village and the prisoners, proprietors of Magaon, deadly enmity has long existed. We cannot place credit in the evidence of these witnesses; the prosecution fails, and the prisoners must be released.

PRESENT :

SIR R. BARLOW, BART.,
 AND
 J. R. COLVIN, Esq., } Judges.

GOVERNMENT

versus

KISTODHONE GHOSE ALIAS KISTOMOHUN GHOSE
 (No. 1), BENEEMADHUB GHOSE (No. 2), BINDA-
 BUN CHUNDER GHOSE (No. 3), RAMROOP GHOSE
 (No. 4), RAJKISTO NUNDEE (No. 5), AND TYLUCKHO
 NAPIT (No. 6).

24-PERGUNNAHS.—CRIME CHARGED.—1st count, wilful murder of prosecutor, Muthoor Awoolee's brother, Muddun Awoolee, and 2nd count, being accomplices in the above crime.

Committing Officer—Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 2nd August 1853.

Remarks by the officiating additional sessions judge.—The prisoners are charged with wilful murder and complicity therein, and plead *not guilty*.

The deceased was the brother of the prosecutor, and the alleged cause of the murder the existence of a criminal intercourse between the deceased and the sister of the prisoner, Kistodhone Ghose. The prosecutor was from home when the murder took place, but the moment he learned the fact, his suspicions against the prisoners were excited, and on these suspicions the darogah took up Bindabun Chunder Ghose, Ramroop Ghose and Rajkisto Nundee. The two latter confessed before the darogah and implicated the prisoners Kistodhone Ghose, Beneemadhub Ghose and Tyluckho Napit, who were apprehended three weeks after the murder, on the offer of rewards for their arrest. The prisoners are all connexions and relatives, and entertain feelings of hostility against the prosecutor and his party from various causes.

Simultaneously with the arrest of the prisoners Bindabun, Ramroop and Rajkisto, the capture of another party was effected, who admitted his complicity in the murder to a certain extent, and whom the magistrate very judiciously made an approver. This individual, by name Ishan Chunder Ghose, gives the principal evidence against the prisoners and proves that Kistodhone, Beneemadhub, Rajkisto and Tyluckho dragged the deceased out of a hut; that the two former put a rope round his neck and strangled him, while the two latter held his hands

and feet; that Bindabun and Ramroop stood by and looked on, and that all the prisoners removed the body after death and threw it into the fields. His detail of the whole scene of the murder is most circumstantial, and shows that the guilty pair were first secured in a small house on the premises without his knowledge, and the prisoner Kistodhone then twitted as to the chastity of his sister; proof of her frailty was tendered; Kistodhone accepted the gage and vowed vengeance on the offender, proceeded to put it to the issue. The result has been shown.

The mother of the prisoner Kistodhone, and her frail daughter Diamie, who live in the same enclosure, depose to the fact of the prisoners dragging and forcibly carrying away the deceased at about 11 o'clock at night. They describe him as receiving very rough usage in this removal at the hands of all the prisoners, save their near relative and kin, Kistodhone, whom they omit to name. They decline to admit that the deceased was seized in the house set apart for their dwelling, though the fact is quite inferable from the tenor of their evidence.

The witnesses, Juddonath Ghose, Ramchund Ghose and Surup Ghose, speak to the removal of the body of the deceased by the prisoners after death. They state that it was carried in their hands, and thrown into a spot in the fields, where it was discovered the following morning. One of these witnesses omit to name the prisoner Ramroop, and the other two the prisoner Bindabun Chunder as engaged in this work, but the discrepancy is immaterial.

The evidence of the civil surgeon goes to show, that among other minor injuries exhibited on the body of the deceased, there were marks of a ligature round the neck with abrasion of the skin, and describes a state of the internal economy of the system, which plainly indicated that strangulation was the cause of death.

Mudusudun Chowkeedar, of the quarter in which the prisoners reside, deposes, that he saw the prisoners Kistodhone, Ramroop, Rajkisto and Tyluckho returning from the direction in which the body was found, about 3 A. M. on the night of the murder. He also states, that before this, near midnight, he heard a noise in the house of the approver, and on asking the cause, was told by that individual that he was entertaining friends on the occasion of some ceremony usually observed by native parents, on the eighth day after the birth of a child (male, I believe.)

The witness, Jhuru Kurni, only speaks to the reputed illicit intercourse between the deceased and the sister of the prisoner, Kistodhone, and the existence of ill-will between the parties concerned.

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DHONE
GHOSE and
others.

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Case of
KISTO-
DHONE
GHOSE and
others.

The next witness, Anund Chunder Day, corroborates the statement made by the approver, Ishun Chunder Ghose, and affirms that about midnight that individual was called away from home by the prisoner Ramroop.

I pass over the testimony given by the witness, Kishtomonee Khanki, as it proves nothing material to the case, and only notice the evidence of Shama Churn Roy, with the view of showing that the prisoner Tyluckho absconded after the murder and was taken at some distance from his usual place of abode.

The rest of the evidence for the prosecution proves the inquest held on the body by the darogah, the existence of a criminal intercourse between the deceased and the sister of the prisoner Kistodhone, and the mofussil confessions of the prisoners Ramroop, Rajkisto and Tyluckho. These confessions speak for themselves, and prove the prisoners' complicity in the murder and removal of the body. They are credibly supported and bear the official attestation of the police officers before whom they were made.

The plea of the prisoners is *alibi*, but they all aver that they are more or less the victims of animosity and hostile feelings. Fifteen witnesses were examined on their behalf, but failed to establish either plea in any instance. Two of the number have been dismissed from the office of chowkeedar, by the magistrate, for giving palpably false evidence in favor of the prisoners Kistodhone and Benimadhub.

The *futwa* of the law officer acquits the prisoners of wilful murder, but finds them *guilty* of causing the death of the prosecutor's brother, Mothoor Awoolee, in the manner detailed in the evidence for the prosecution. It bars *kissas* and declares the prisoners liable to discretionary punishment by *akoobut*.

I dissent from the finding and convict the prisoners of wilful murder. Had the evidence against the prisoners, Kistodhone Ghose and Benimadhub Ghose, been in the slightest degree more conclusive, I should have selected them for capital punishment; but under all the circumstances of the case, I think justice will be satisfied and the law vindicated, by a sentence of transportation for life, which I recommend to be passed on all the prisoners.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. R. Colvin).—The evidence for the prosecution has been throughout clear and consistent. The approver and the mother, Surguttee and Diamie, sister of the prisoner, Kistodhone, (No. 1), have deposed to the presence and active part taken by all the prisoners in the matter, save (as regards the statement of the two women) the prisoner No. 1, whom they very naturally wish to exonerate. It ap-

1853.

Pears that, on the prisoner No. 4 giving information to No. 1, that he had traced the deceased in the house of Musst. Diamie and blocked up the door; the prisoner No. 1 said, if it was so he would kill him, and having collected some of his friends and servants, he proceeded to Diamie's house; there he was told to satisfy himself as to his sister's character; they all entered, seized the deceased, fastened a rope round his neck, when, as threatened previously by Kistodhone, Muddun was killed. What part each of the prisoners may have taken in the murder is not exactly shown, but that each and all of them were aiding and abetting in the act, which we consider, from the number of the assailants and the circumstances attending it is one of an aggravated nature, is fully proved. The prisoner No. 1 has pleaded the dishonor to which he was subjected in extenuation. He did not however act upon the impulse of the moment, which might perhaps have furnished some ground for a mitigated sentence. His acts disclose a degree of deliberation, during the time which elapsed between receipt of the information from Ramroop, to the actual perpetration of the murder, such as would not warrant the Court in awarding a measure of punishment, less than that recommended by the sessions judge.

The other prisoners do not stand in that relation to Musst. Diamie, which would in any degree justify the act with which they stand charged.

On the whole we see no reason to interfere with the sentence recommended by the sessions judge. The case does not, we think, call for a capital sentence on any of the prisoners.

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Case of
KISTO-
DHONE
GHOSE and
others.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT AND BOYDNATH GOPE,

versus

TRIAL NO. 7—BAZOO NUSHA (No. 5), NEELOO SHEIKH (No. 6, APPELLANT), SHONAMDEE NUSHA (No. 8, APPELLANT), RAMJAN SHEIKH (No. 9, APPELLANT) AND ANOO SHEIKH (No. 10).

TRIAL NO. 9—BAZOO NUSHA (No. 5), NEELOO SHEIKH (No. 6) AND RAMJAN SHEIKH (No. 9.)

RUNGPORE.

1853.

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Trials
Nos. 7 & 9.
Case of
NEELOO
SHEIKH and
others.

The consolidated sentences passed by the sessions judge on several prisoners charged with two cases of burglary were reduced in appeal.

CRIME CHARGED.—Trial No. 7—Prisoners (Nos. 5 and 6), 1st count, committing a burglary in the house of the prosecutor and stealing therefrom property valued at Company's rupees 4-10-6 ; 2nd count, being accomplices and aiding and abetting in the commission of the said crime ; No. 6, 3rd count, having in his possession property acquired by the said burglary, knowing it to have been so obtained ; Nos. 8, 9 and 10 having in their possession property acquired by the said burglary, knowing it to have been so obtained.

Trial No. 9—Prisoners (Nos. 5 and 6) committing a burglary in the house of the prosecutor, and stealing therefrom property valued at Company's rupees 3-2-3, and on a 2nd count, with being accomplices and aiding and abetting in the commission of the said crime ; prisoner (No. 5,) on a 3rd count, having in his possession property acquired by the said burglary, knowing it to have been so obtained ; prisoner (No. 9) having in his possession property acquired by the said burglary, knowing it to have been so obtained.

CRIME ESTABLISHED.—Trial No. 7.—Nos. 5 and 6, burglary, and Nos. 8, 9 and 10, having in their possession property acquired by the said burglary, knowing it to have been so obtained.

Trial No. 9—Nos. 5 and 6 burglary, and No. 9 having in his possession property acquired by burglary, knowing it to have been so obtained.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 18th April 1853.

Remarks by the officiating sessions judge.—Trials Nos. 7 and 9—This and the following case are of burglary, in one of which the prisoners (Nos. 4 to 10) were concerned, and in the other only Nos. 4, 5, 6, 7 and 9, but unfortunately those reported to be the leaders (Nos. 4 and 7) escaped from jail a few days

before the opening of the sessions. It was shown on trial, that the chowkeedar Munnee (witness No. 3), finding the prisoners absent from their houses on the night of the 23rd of Aghun 1259 (7th December 1852), called upon some of the neighbours to set up and watch with him, which they did and arrested Nos. 4 and 5; of the other prisoners, who were with him escaped, but he confessed, and the property was found and all the prisoners apprehended.

Prisoners (Nos. 5 and 6), confessed before the darogah, and No. 5 before the joint-magistrate, and the confessions of Nos. 5 and 6 were proved to have been free and voluntary.

The property was clearly proved to be that stolen from the two houses.

On both trials, No. 5 pleads utter ignorance of every thing, and denies his confession, but attempts no defence.

No. 6, in the first trial, brings his father and others to prove the property found to be his, but I discredit the witnesses. On the second trial, he denies and pleads good character and brings two witnesses, who say they knew him to be respectable in former days, but nothing of him now.

No. 9, denies and states in the first trial, that Khosal, who has escaped, gave him the property found, and on the second, that Khosal was angry with him because he would not take charge of the property, and that therefore he had the property in his house and implicated him in his confession.

The same jury in both trials, Ramruttun Lahooree, Issur Chunder Chuckerbutty, Mohabut Alee and Haradlun Sircar, were unanimous in their opinion, and in the first trial returned a verdict of guilty against Bazoo and Neeloo on the 1st count, and Ranjan on the 4th count; in the second trial against Bazoo and Neeloo on the 1st count, and Ranjan on the charge preferred against him.

The other prisoners were only arraigned on the 1st trial; calendar No. 3 then No. 8, denies and claims the property and brings his uncle and nephew to prove it, but I was not satisfied.

No. 10 denies and says the property is his, but was Khosal's (who has escaped); his four witnesses all declare they know nothing about the property produced, or whose it is. The jury convict on the 4th count and I agree.

The mohurir detained the prisoners an illegal and perfectly unnecessary time at the thannah, to which I drew the joint-magistrate's attention; and since he has informed me that he has punished him, and I also suggested the propriety of the joint-magistrate's recommending the chowkeedar to the superintendent of police for a reward.

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Trials.

Nos. 7 & 9.

Case of

NEELOO

SHEIKH

and others.

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Trials

Nos. 7 & 9

Case of

NEELOO

SHEIKH and

others.

Sentence passed by the lower court.—Nos. 8 and 10 to be imprisoned, with labor and irons, for five (5) years each ; Nos. 5, 6 and 9, each to be imprisoned in aggregate for this and the following case ; Nos. 5 and 6, with labor and irons, in banishment, for ten (10) years, and No. 9, with labor and irons, for ten (10) years, being a consolidated sentence.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Three of the prisoners, Neloo, Shonamdee and Ramjan, appeal. Their appeals relate to two distinct cases. The finding of the jury, in which the sessions judge concurs, is good upon the evidence against all three. The value of property stolen in one case amounts to rupees 4-10-6, in the other to rupees 3-2-3. There are no circumstances of aggravation in either ; and but for the fact that Khosal, (prisoner No. 7), (escaped from jail,) had been previously convicted of burglary, both cases might have been disposed of by the magistrate himself. The punishment awarded by the sessions judge is, under the circumstances, unnecessarily severe. I therefore reduce it in the case of Shonamdee (No. 8), to imprisonment, with labor in irons, for two (2) years, and in the case of Neloo and Ramjan to imprisonment, with labor and irons, for four (4) years. The sessions judge will make a corresponding alteration in the sentences passed against those prisoners who have not appealed, reducing them to four (4) years where the conviction is for burglary and theft, and to two (2) years where it is for receiving stolen property.

In the event of the escaped prisoners being re-taken, it will of course be competent to him to enhance the punishment of Khosal, should he have before him satisfactory evidence of previous conviction of a heinous offence.

PRESENT :

J. DUNBAR, Esq., *Judge*,

AND

H. T. RAIKES, Esq., *Officiating Judge*.

KUNHYE SINGH AND GOVERNMENT,

versus

MULOOAH KOORMEE (No. 4), BUDIHA KUHAR (No. 5), RAMSUHOY KOORMEE (No. 6), DUREA KOORMEE (No. 7), VIZEER MISSER (No. 8), MUNGUR GWALA (No. 9), AND MUSST. DOMNI GWALIN (No. 10).

CRIME CHARGED.—1st count, theft of property, valued at rupees 982-6, from the house of Rasbehary Lal and 2nd count, receiving and having property acquired by the above-mentioned theft, knowing the same to have been so acquired.

Committing Officer—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. B. J. Colvin, officiating commissioner, with powers of a sessions judge at Patna, on the 5th August 1853.

Remarks by the officiating commissioner.—The case is referred, as the law officer convicts No. 10, Musst. Domni, whom I would acquit.

The theft charged took place on the night of Saturday, 25th June, when the toshakanah of Rasbehary Lal, the prosecutor Kunhye Singh's master, which was under the charge of prisoner (No. 4), was robbed and property to the amount of rupees 982-6 taken away. On the Sunday morning the occurrence of the theft was known, and reported that day at the thannah. Next day nothing was done, but on Tuesday Rasbehary Lal taxed prisoner No. 4 with the theft, or knowing something about it. He denied, but mentioned that prisoners (Nos. 5, 6, 7 and 8) had some days before proposed the theft to him. He was thereupon made over to a burkundauze stationed in the village, to whom he stated, that the theft had been committed and portion of the property put in his house by the above persons; rupees 306 and a gold chain worth 252 rupees were taken out of his house. Prisoner (No. 5) also allowed that he had portion of the property in his house, when not only rupees 105-4 were found in it, but he also next day pointed out where the box which had contained the property was concealed in the bed of a river. Information being sent to the thannah, the darogah came next day and searching the houses of Nos. 6, 7, 8 and 9, certain articles of property stated to belong to the prosecutor were

PATNA.

1853.

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Case of
MULOOAH
KOORMEE
and others.

In a case of
theft one pri-
soner, regard-
ing whom the
case was refer-
red to • the
Court was ac-
quitted for want
of evidence.

1853.

August 31.

Case of
MULOOAH
Koomree
and others.

found in them Prisoner No. 10 also produced rupces 6 which had been given her by the wife of the maternal uncle of prisoner No. 5.

Prisoners Nos. 4, 5, 6 and 7 are the servants, either of the prosecutor's master, or of his relatives ; Nos. 8, 9 and 10, are residents of the village.

The answers of Nos. 4 and 5, both in the mofussil and before the magistrate, which have been acknowledged by them before me, are *quasi* confessions of guilt, but no regard can be paid to the former, as they were elicited by promises of pardon made by the burkundauze. Those before the magistrate, although proved to have been free and voluntary, do not acknowledge the commission of the theft, but only having the stolen property in possession ; No. 4 saying, that it had been put in his house by the others, and No. 5, that he had received what was found in his, as share of the plunder. Prisoners Nos. 6, 7, 8, 9 and 10 deny the charges.

Two pair of *pyjamas* were found in the house of Nos. 6 and 7, which are claimed by them ; but they sufficiently proved to belong to the prosecutor.

The proof against No. 8 is the finding of a Mohomudshye gold-mohur in his house. The prosecutor, on the morning succeeding the theft, did not enter gold-mohurs in the list sent with the report of its occurrence, but in a list presented on the 29th June, when the darogah came, and before search was made, five* were inserted as having been stolen. The prosecutor's witnesses depose to its being his, while the prisoner claims it as his own. The place where he acknowledges it was found was a very suspicious place for its being kept in.

Against prisoner No. 9 the only proof offered is the finding of a *doputtah*, which he does not claim as his and which the prosecutor's witnesses recognise.

Against No. 10, who gave up rupees 6, which had been placed with her, it is not proved that she had any guilty knowledge.

The law officer convicts Nos. 4 and 5 of theft ; in this I concur. I agree with him also in convicting Nos. 6, 7 and 8 of the 2nd count, and in acquitting No. 9. His house was searched in too irregular a manner for proof of his guilt to be deduced from the finding of the *doputtah* in it. He has been released. It has been above said that this reference is made regarding prisoner No. 10.

* 4 Kaldar
1 Mahomedshye

In consideration of No. 4 being servant of the prosecutor, I have sentenced him to seven (7) years' imprisonment with labor and irons, and to two (2) years more in lieu of stripes; altogether nine (9) years, in banishment. I have sentenced No. 5 to seven (7) years' imprisonment, with labor and irons, in banishment, and Nos. 6, 7 and 8 to two (2) years' imprisonment, with labor and irons, and one (1) year in lieu of stripes. The issue of sentence has been deferred according to Clause 6, Section IV. Regulation IX of 1831, pending orders on the case of Musst. Domni.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.)

MR. J. DUNBAR.—I concur with the commissioner, and would acquit prisoner (No. 10,) Musst. Domni. The witnesses, Joomun, Burhum Singh and Kurrim Buxsh, distinctly say, that she at once and voluntarily gave up the property traced to her, and there is no evidence to show that she knew it to have been acquired by theft.

The statements of prisoners Nos. 4 and 5, on the trial, amount to admissions of participation in the theft, and on this ground, although not noticed by the commissioner, their conviction on the 1st count is good.

MR. H. T. RAIKES.—I concur in the acquittal of Musst. Domni, and see no reason to interfere with the order of the commissioner on the other prisoners.

1853.

August 31.
Case of
MULOOAH
KOORMEE
and others.

SUMMARY CASE.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

RAMCHUNDER BUNDOPADHYA, ON THE PART OF MR.
MEARES,

versus

MOOCHAI SIRDAR.

This case was referred to the Nizamut Adawlut, under Section V. Act XXXI. of 1841, and Circular Order, dated 18th March 1842, by Mr. R. M. Skinner, sessions judge of Jessore, on the 26th July 1853, with the following report:

Under Section V. Act XXXI. of 1841, and Circular Order of the Nizamut Adawlut, dated 18th March 1842, I herewith trans-

mit the record of the case noted
on the part of Mr. Meares,
versus
Moochai Sirdar.

in the margin, together with copy
of a letter from officiating magis-
trate, No. 368, of this date, from
which it appears to me that the
purport of the Circular Order, No. 99, of 29th October 1852, has neral law by
been misinterpreted, as that officer has not, in accordance with which in the
Section III. Regulation II. of 1834, commuted the penalty of
labor in addition to imprisonment to a fine; the interference
of the Court is therefore solicited to reverse the sentence of 25th June, *viz.*, (6) six months with labor and a fine of two hundred
(200) rupees, or in default of payment an additional (6) six
months with labor.

JESSORE

1853.

August 8.

Case of
MOOCHAI
SIRDAR.

Circular Or-
der, No. 99,
dated 29th Oct.
1852, does not
affect the go-
offences, ex-
cepted in
(clause 1., Sec-
tion III., Re-
gulation II., of
1834, labor is
made commu-
nitable by a fine.

In the other case alluded to in the same letter, a chowkeedar was sentenced on 17th June to a month's imprisonment with labor, but the period had expired before the monthly statements came before me, no appeal was preferred.

Resolution of the Nizamut Adawlut, No. 942, dated 8th August 1853.—(Present: Mr. J. R. Colvin.)—The Court having perused the papers above recorded, connected with the case of Moochai Sirdar, observe that the officiating magistrate has misunderstood the purport of the Circular Order, No. 99,

* From the officiating magistrate of Jessore, to the sessions judge of Jessore, No. 368, dated 26th July 1853.

With reference to your roobukaree, dated the 23rd instant, I have the honor to send the two cases noted in the margin, and to inform you that I punished the parties in accordance with a Circular Order of the Nizamut Adawlut, No. 99, dated 29th October 1852

Ramchunder Bundopadhyay, on the part of

Mr. Meares,

versus

Moochai Sirdar,

—

Government,

versus

Jhubber Chowkeedar.

1853

August 8.
Case of
MOOCHAI
SIRDAR.

of the 29th October last. That Circular was not intended and could not operate to modify the law in any case. The conviction in the present case was of attack on a factory, this act being one of the offences excepted in Clause 1, Section III. Regulation II. of 1834, the officiating magistrate was bound to make the imposition of labor contingent in the prescribed manner, upon the non-payment of such reasonable fine as he might, under the authority vested in him, think fit to adjudge.

The order of the officiating magistrate of the 25th June 1853, in regard to the prisoner, Moochai Sirdar is, therefore, cancelled, and he will proceed to pass a fresh sentence on him in conformity with the law, as above explained.

PRESENT:
J. DUNBAR, Esq., *Judge.*

NARAIN SENAPUTTEE AND GOVERNMENT
versus

PINDUCK MAINTEE (No. 1.) AND ANUNT MAIN-
TEE ALIAS ANUNTRAM MAINTEE (No. 2.)

CRIME CHARGED.—1st count, wilful murder of Bidiadhur Senaputtee, son of Narain Senaputtee, prosecutor, and 2nd count, assault in which Bidiadhur Senaputtee lost his life.

Committing Officer—Mr. E. Drummond, magistrate of the southern division of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 8th August 1853.

Remarks by the sessions judge.—The particulars of this case are as follows:—

• Early on Saturday morning, the 4th June, Bidiadhur Senaputtee, the deceased, and his cousin, Gungadhir Senaputtee, deputed their servants to plough some land in the Belaspore bheel, of which they had recently obtained a *pottah* from Soodursun Puhraj, the *kurpurdaz* of the lakhirajdar, Nuny Churn Lal, in supersession of the prisoner, Pinduck Maintee, in whose possession it had been for the last seven or eight years, and who had already cultivated and sown the crop of the present season; and on the said servants reaching the ground, they were met by Pinduck Maintee, who, to prevent their ploughing up his crop, took the plough-share from their ploughs, and, as is stated by the witnesses, gave them to Anunt alias Anuntram Maintee, his nephew, whom he had called from a neighbouring field. And when the deceased and his cousin arrived shortly afterwards with the seed grain and heard what had happened, they demanded the plough-shares and were advancing towards Anunt Maintee for the purpose of taking them, when Pinduck Maintee first inflicted two slight wounds on the neck and left breast of Gungadhir Senaputtee; and on his absconding, he attacked Bidiadhur and stabbed him also in the breast, puncturing, according to the assistant-surgeon's report and evidence recorded, before the magistrate, the heart and lungs, when he likewise ran away a few paces and fell, and shortly afterwards expired. And his father and others, who had intermediately arrived, carried his body and placed it at the door of Pinduck Maintee's house, and the *surburakar* of the village sent the chowkeedars in search of Pinduck Maintee, whom they apprehended in the neighbouring village of Ihdpore.

CUTTACK.

1853.

September 1.
Case of
PINDUCK
MAINTEE and
another.

Prisoner
convicted of
aggravated
culpable
homicide and
sentenced to
fourteen years'
imprisonment.

1853.

September 1.
Case of
PINDUCK
MAINTEE and
another.

Pinduck Maintee, (prisoner No. 1,) pleaded *not guilty* throughout and stated, that at the time the deceased was killed, he was engaged sowing his field in the Soobrat bheel, half a mile distant from the place of occurrence, and that the charge had been got up against him by the plaintiff and his witnesses, in collusion with Soodursun Puhraj, with the view to dispossess him from the land which formed part of his *bhoocchhatta* (putwaree) jaghir and his rights as *pudhan*. And he further alleged, that the prisoner Anunt Maintee had through enmity in his answer, implied that the deceased had been killed by him; but the witnesses named by him did not establish his *alibi*.

Anunt *alias* Anuntram Maintee denied all participation in the quarrel, which led to the death of Bidiadhur Senaputtee, and stated that he assisted the deceased after he was wounded by giving him water to drink, and that he had quarrelled with his uncle, Pinduck Maintee, and had been long separated from him, and had no interest whatever in the land in dispute.

All the witnesses (Nos. 1 to 5) distinctly depose to Pinduck Maintee's having been present at the place of occurrence, and although only witnesses Nos. 2, 3 and 4 state, that they saw him inflict the wound on the deceased, they all depose to having seen him wound Gungadhusur Senaputtee, who is himself witness No. 1. But as regards Anunt Maintee, although witnesses Nos. 2, 3 and 5 depose, that he seized hold of the deceased at the time Pinduck Maintee stabbed him, the above-named Gungadhusur Senaputtee deposed, that he did not see him strike him, or in any way interfere with him; and witness No. 4 stated, that he only endeavoured to separate Pinduck and the deceased. And it is manifest from the evidence generally, that he is entirely separate from Pinduck Maintee, and is in no way interested in the disputed land.

The law officer remarks in his *futwa*, that although implicit reliance cannot be placed in the evidence of the eye-witnesses, it appeared from their evidence generally, the answer of the prisoner No. 2, and the general circumstances of the case, that the deceased proceeded to the field in full health, and there a quarrel took place between him and witness No. 1 and Pinduck Maintee, (prisoner No. 1,) about the field which was in the possession of, and had previously been sown by, the prisoner; and that witness No. 1 and the deceased were wounded by the said prisoner, and that after a few minutes, the deceased died of his wound. But it was not to be credited, that Anunt Maintee (prisoner No. 2) seized hold of the deceased, while the prisoner No. 1 wounded him, because he was separate from prisoner No. 1, and had no interest in the land; and it appeared, that after he was wounded, he rendered him assistance, and he in

consequence convicts Pinduck Maintee, on violent presumption of the crime charged and declares Anunt Maintee entitled to his release.

In the above verdict, I concur, for although with reference to the circumstances attending the quarrel, the time of day at which it took place, and the proximity of the witnesses to the parties concerned in it, the evidence is not quite so lucid as it might have been; and it appears doubtful from the nature of the wound, which caused the death of the deceased, as described by the assistant-surgeon in his deposition, taken before the magistrate, and the general facts of the case, whether the said wound was inflicted with a knife or a plough-share or other instrument. The witnesses distinctly depose that the prisoner, Pinduck Maintee, stabbed and killed the deceased, and the provocation given him to commit some act of violence on the deceased, affords corroborative proof of the correctness of their testimony touching the main point at issue, *viz.*, by whom was the deceased killed? And although the prisoner, Pinduck Maintee, endeavoured to prove an *alibi*, he altogether failed in doing so. Therefore, under all the circumstances of the case, and more especially with reference to the great provocation offered the prisoner by the deceased and his cousin, in attempting to plough up his crop and dispossess him from the land, which he had cultivated for the last six or seven years, I am induced to abstain from recommending a capital sentence, and to suggest that he be imprisoned for life, in transportation, beyond sea.

Anuntram Maintee was acquitted and released, in conformity with the *futwa*, as I did not consider the evidence against him proved that he, in any way, assisted Pinduck Maintee, and he apparently had no cause for doing so, as he was in no way interested in the disputed land.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—It was very necessary in this case, to ascertain not merely by whom the deceased was killed, but also with what instrument or weapon the wound, which caused death, was inflicted. In regard to the first point, the evidence leaves no reasonable ground for doubt, as to the prisoner's being the person who stabbed the deceased. There is considerable room, however, for doubting whether the fatal wound was inflicted with a knife or with the plough-share. It is true, witnesses Nos. 2, 3 and 4, all swear that a knife was the instrument used, but they are dependants of the prosecutor; whereas Jogee Misser, (witness No. 5,) who is unconnected with either party, and who was accidentally on the spot, declares, from first to last, that the prisoner used only the plough-share. The question is one of such importance, that the evidence of the medical officer

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should have been taken on the trial. From his deposition before the magistrate, it appears that he is not prepared to say, that the fatal wound may not have been given by a thrust of a sharp plough-share; and upon full consideration, and with reference to the improbability of a man in the prisoner's condition of life going about with a knife in his belt, (and there is no reason to think he came to the ground with any deadly purpose), I incline strongly to the belief, that the plough-share was the instrument used. There is nothing in the circumstances to justify the act, but it must be admitted that there is a good deal to extenuate the guilt of the prisoner, who was apparently hurried into the commission of crime, by what he deemed an unjust invasion of his rights. Giving the prisoner the benefit of these favourable considerations, I convict him of aggravated culpable homicide, and sentence him to be imprisoned for fourteen (14) years, with labor, in irons

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT AND MUSST. KOONEE
versus

KARTICK BHOOEE.

CRIME CHARGED.—Wilful murder of Sutro Bhooee, the husband of the prosecutrix.

Committing Officer—Mr. G. C. Fletcher, joint-magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 19th July 1853.

Remarks by the sessions judge.—The following are the particulars of the case:—

Early on the morning of Wednesday, the 15th June last, the deceased, Sutro Bhooee, who was paralytic and had lost the power of articulation, or talking intelligibly, and was otherwise apparently a very helpless creature, is said to have taken a handful of *dhan*, which was laid out to dry on a mat in front of the house of his neighbour, Nidhee Bhooee; and Nidhee Bhooee's daughter, having seen him take the *dhan*, gave information to the father and brothers, when they returned home from their fields, they abused and threatened the deceased. That while they were abusing him, the prosecutrix went away to the river to bathe, whence she was shortly afterwards called back by Gobind Bhooee, one of the sons of Nidhee Bhooee, who told her some one had come to her house and called her; that on repairing there, she saw the prisoner and Nidhee Bhooee and Boodhee Bhooee (the father and uncle)

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Prisoner charged with wilful murder, acquitted by the Court in accordance with the opinion of the sessions judge who differed from his law officer

of the prisoner) sitting by the dead body of her husband, and was told by them that her husband had died of *chonringhee bat* or paralysis, at *Raostra-bagh*, an adjoining garden. That she then accused them of having killed her husband, but they all denied; and she called the chowkeedar, who first gave information to the zamindar, and then at the thannah; and the darogah came on Friday, and after taking her deposition, apprehended Nidhee Bhooee and his three sons; and Boodhee Bhooee and Ram Bhooee and the prisoner confessed, and the others denied.

The following is the purport of the prisoner's mofussil and foudjaree confessions, dated respectively the 18th and 19th June 1853:—

That on Wednesday morning, he and Ram Bhooee (brother of the deceased) and Bluggee and Hooree Bearah were called by Kaliudy Puttee (witness No. 10) to plough his field, and on his return home, at noon, he was told by his sister, Goroobaree, that the deceased came to the house for a light and took some *dhan*; that being hungry after ploughing, he got angry on hearing the above, and seeing Sutro Bhooee standing in the nullah near his house, he took a bamboo (not a very heavy one, and one which was split half way up) and ran towards Sutro Bhooee, who absconded, limping along the ground to the *Raostra-buggeecha*, and sat under the mangoe-tree pointed out to the darogah, where he struck him two blows with the bamboo, which he held in both his hands, on the head, and he fell quivering on the ground, when Kalindee Puttee (witness No. 10) arrived and asked him what he had done? and said he would inform his father and brother. That Sutro Bhooee then died and he (the prisoner) went to the Sorooh River to bathe, and on his return home thence, he saw the body of Sutro lying at his door, and his (the prisoner's) father, Nidhee Bhooee, and Ram Bhooee, the brother of the deceased, sitting by it. *That he did not mention what had happened to his father or any one else, neither did they ask him any questions*; but he afterwards heard that his father, together with Ram Bhooee and Kalindee Puttee had brought his body from *Raostra-bagh*, and that Kalindee informed his father and others that he had killed him and told him to put a rope on the tree, and tell the darogah when he came that he hanged himself, and accordingly some one suspended a string to the tree, but he did not see who did so.

Before this court he pleaded *not guilty*, and stated that he was tutored by the darogah and Kalindee Puttee (witness No. 10).

The only witness adduced to substantiate the charge, on the part of the prosecution, is that of the above-named Kalindee

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Puttee and Ram Bhooee, the brother of the deceased, and Bhodee Bhooee, the uncle of the prisoner.

1. Kalindee Puttee, (witness No. 10,) merely deposed, that about 1 P. M., when he was returning home after bathing in the Sorooh River, by the *Raostra bheel*, five *haths* from the road, he saw the prisoner running with a bamboo in his hand and asked him the cause; that on his not giving a quick answer, he looked in the direction of the garden, and, at a short distance off, saw a man lying there; and on his again asking the prisoner what had happened, he told him, that on his going home after ploughing, he was informed by his sister that Sutro Bhooee had taken some *dhan* from their mat, and that he struck him two blows on the head and he fell to the ground; that he (deponent) then went and informed Nidhee Bhooee and Ram Bhooee and afterwards went to his own house; and that he did not go near the deceased, because he was of low caste.

Ram Bhooee, (witness No. 11,) brother of the deceased, deposed, that after he had returned home from ploughing, he was about to eat his rice, when Gobind Bhooee came and told him, Kalindee Puttee had called him, but he did not go to him, and Kalindee Puttee then came with the prisoner's father (Nidhee Bhooee) and informed him his brother was lying dead at *Raostra-bagh*; and after telling him to go and to bring his body away, Kalindee went home, and he with Sudhee Bhooee and Bhodee Bhooee went and brought the body, on the head of which was a wound from which blood was issuing. That Bhodee had a quarrel with deceased, but he was not aware there was any quarrel about his taking the *dhan*; he was in the *bheel* ploughing and came home at noon; that he did not hear how Sutro was killed at the time he went to bring his body home; that Kalindee Puttee did not, in his presence, say that he had seen Kartick Bhooee on the road or had any conversation with him, nor did he see the prisoner, Kartick Bhooee, anywhere, when he went to fetch the body; that his brother had not the use of his right arm and for six months previous, his speech was unintelligible; that he saw no blood on the ground where the body was lying; that he did not tell the prosecutrix that deceased had hanged himself, but Nidhee Bhooee did.

Bhoodhee Bhooee, (witness No. 11,) deposed, that he knew nothing about the deceased's death, but that at noon, on the day of occurrence, Rama Bhooee called him to remove the deceased's body from the *Raostra-bagh* and he accompanied him, and Nidhee Bhooee brought it; and he denied that he told the prosecutrix that her husband committed suicide.

The remainder of the witnesses only speak to the inquest held on the body, and the fact of the prisoner having made voluntary confessions before the police and the officiating magistrate.

The prisoner pleaded *not guilty* before this court, and stated that he was tutored by the darogah and Kalindee Puttee to say that he killed the deceased.

The *futwa* of the law officer convicts the prisoner, on his own voluntary confessions and the general circumstances of the case, of the culpable homicide of the deceased, Sutro Bhooee, declaring the higher crime of wilful murder not being established, in consequence of the stick or bamboo, (about nine ounces in weight,) with which the blows that caused his death were inflicted, not being, according to Mahomedan law, a deadly weapon.

But from the above verdict I dissent, and notwithstanding the prisoner made confessions before the police and the magistrate, which the attesting witnesses have certified to have been voluntarily made, I for the following reasons, can place no reliance on the confessions or the evidence of Kalindee Puttee, and I am of opinion, that the prisoner, as alleged by him before this court, was tutored by the darogah and the said Kalindee Puttee to screen other parties. In the first place it is clear from the deposition of the prosecutrix, that Nidhee Bhooee, the father of the prisoner, and owner of the *dhan*, (the alleged cause of dispute that led to the deceased's death,) and his other two sons, Bulea and Gobind Bhooee, who are both older than the prisoner, (the one being twenty-three and the other twenty years of age, whereas, after minutely inspecting Kartick Bhooee, I certainly don't think he can be more than fourteen years of age, though he states himself to be eighteen years,) as well as Bodhee Bhooee were at home at the time of the occurrence, and the prosecutrix states, that she heard the said Nidhee Bhooee and his three sons abuse and threaten her husband before she went to the river, whence she was called back by Gobind Bhooee, the second son of Nidhee Bhooee, and found her husband lying dead at her door. And therefore it is not at all likely that the youngest of the whole party, who had so little interest in the *dhan*, and was likely so careless, should assault and murder the deceased, because he had taken a handful of *dhan*; *secondly*, had the prisoner killed the deceased in the manner represented, the chowkeedar could not have failed to have heard of the circumstance before he went to the *thannah*, and the darogah would certainly have learned the fact on the first day of his arrival, more especially if Kalindee Puttee, as is now alleged, saw him run away from the garden, and was told by him

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that he killed the deceased ; and the prisoner would, in all probability, have confessed at once ; but instead of such being the case, the prisoner denied when first apprehended, and did not confess till the 18th June, the third day after the occurrence. Moreover if the statement of Kalindee Puttee be true, it is impossible to account for his having been examined as defendant on the 20th June in the mofussil, and for his deposition as witness not having been recorded till that date ; *thirdly*, it is evident from the record of the mofussil and foudjaree proceedings, that Nidhee Bhooee, Boodhee Bhooee and Ram Bhooee, in connivance with Kalindee Puttee, trumped up a story that the deceased had committed suicide by hanging himself, and the three former denied that they heard from Kalindee Puttee, that he saw Kartick Bhooee, the prisoner, abscond from the garden whence they carried the body home ; *lastly*, it appears to me highly incredible that the deceased, a poor helpless cripple, who was barely able to move about the village, having entirely lost the use of one arm and almost the entire power of speech, and was otherwise enfeebled by paralysis, could, had he been pursued by the prisoner, have limped to the place, where he is said to have been killed, more especially when it is considered that the sandy bed of a broad nullah intervened his house and the said garden.

Taking all these circumstances into consideration, I am of opinion, that advantage has been taken of the prisoner's youth, and that he has been made a scape-goat to screen others ; and I beg to recommend that he be acquitted and released.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—After inspection of the record and consideration of all the circumstances connected with the trial, I concur in the conclusion at which the sessions judge has arrived. I accordingly acquit the prisoner, and direct his immediate release.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

RADHAMOHUN OOLASINEE

versus

MUDHOO DASS (No. 25 APPELLANT,) MUDHOO MY-
TEE (No. 26 APPELLANT,) AND BOODHOORAM
BHOOYA (No. 27 APPELLANT.)

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, and plundering therefrom property to the value of Company's rupees 44-8-3 ; 2nd count, aiding and abetting in the above crime ; 3rd count, knowingly receiving and having in their possession property acquired by that dacoity.

MIDNAPORE.

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September 2.
Case of
Mudhoo Dass
and others.

Three pri-
soners convict-
ed of dacoity
with plunder
and sentenced
by the sessions
judge. Appeal
rejected

CRIME ESTABLISHED.—Dacoity with plunder.

Committing Officer—Mr. V. H. Schalch, magistrate of Mid-napore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 19th May 1853.

Remarks by the sessions judge.—The prosecutor's house was burglariously entered, on the night of the 13th March, and property to the value of Company's rupees 44-8-3 plundered therefrom. The prosecutor was absent from home at the time, but on his return he obtained such information as led him to suspect the prisoner No. 25, Mudhoo Dass, was concerned in the robbery. He proceeded to the thannah and caused him (Mudhoo Dass) to be arrested, when he confessed that he, the prisoner No. 26, Mudhoo Mytee, and No. 27, Boodhooram Bhooya, and others, had broken into the prosecutor's house on the night of the 2nd Cheyt ; that after dividing the plunder, Mudhoo Mytee had concealed it in a tank : the prisoners, Mudhoo Mytee and Boodhooram, were then arrested and also confessed. The spots pointed out by the prisoners were searched, and the property, Nos. 1 to 39, which prosecutor identifies as part of that stolen from him, discovered. The prisoners repeated their confessions before the deputy magistrate of Tumlook. In this court they plead *not guilty* ; No. 25 offers no defence ; Nos. 26 and 27 plead an *alibi*, which they fail to substantiate. The confessions are fully corroborated by the evidence, and there is no reason to doubt their truth, or that they were voluntarily given. The prisoner No. 27, Boodhooram Bhooya, is the chowkeedar of a neighbouring village, and his conduct is greatly aggravated thereby. The prisoners are accordingly sentenced, as indicated in the statement. The neglect of the village police to give timely

1853. notice of the robbery at the thannah has been brought to the notice of the magistrate.

September 2. *Sentence passed by the lower court.*—Nos. 25 and 26 to seven (7) years' imprisonment, and No. 27 to ten (10) years' imprisonment, with labor in irons; all the prisoners to pay a fine of rupees 29-9-3, under Act XVI. of 1850, the estimated value of property stolen and not recovered.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—All the prisoners confessed in the mofussil and before the magistrate: the property which had been plundered was also pointed out by them. It appears that the prisoners and several others attacked the house, when, by the confession of No. 27, Boodhooram Chowkeedar, they lighted some straw, entered and beat Huree Pereah, one of the family, as sworn to by herself, and Gooroopersund Chuckerbutty, and proceeded to other acts of violence. The confessions are duly verified, and the production of the property by the prisoners and recognition of it, as belonging to prosecutor, are also proved by the witnesses who were present at the time.

Prisoner No. 25 makes no defence; Nos. 26 and 27 plead *alibi*, but fail to prove it. The sessions judge's sentence is confirmed on appeal by the prisoners.

PRESENT :
J. DUNBAR, Esq., *Judge.*

GOVERNMENT
versus
HAREE.

CRIME CHARGED.—Perjury, in having on the 22nd September 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the officiating magistrate of Rungpore, that the “ Chatrai ryots, Gyan Dass, Mekro Khan, Muchri, &c., with clubs surrounded us, and beat and wounded Waris Alee and Dhunbur Halmanjee, and we fled ; ” and in having, on the 11th March 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Rungpore, that “ I did not see the affray : ” such statements being contradictory of each other on a point material to the issue of the case.

RUNGPORE.

1853.

September 2.
Case of
HAREE.

Prison...
convicted of
perjury. Sentence
of three
years' im-
prisonment
deemed inade-
quate under
the aggravated
circumstances
of the case. Ap-
peal rejected.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 31st May 1853.

Remarks by the officiating sessions judge.—This was a common case of perjury. The prisoner deposed as witness in a heavy case of affray with wounding, before the magistrate, upon the 22nd of September 1852, that he and others had been surrounded by the Chatrai ryots, and some of them severely wounded ; and when examined before the sessions court, on the 11th of March 1853, denied that he was at the spot, or saw or knew anything about the affray. Upon this trial for perjury, he pleads guilty. Witnesses Nos. 1 and 2 prove the foudarce deposition.

Witnesses Nos. 3, 4, 5 and 6 prove the deposition taken in the sessions court.

Defence of the prisoner.—Pleads that he is sick, and does not know what he says ; he produces three witnesses to prove it.

Witnesses Nos. 8, 9, 10 and 11 say they know nothing about his being ill.

The jury, consisting of KALEENATH Chuckerbutty, Moonshee Baisooddeen and Moonshee Euaetoollab, return a verdict of guilty, in which I agree and sentence accordingly.

Sentence passed by the lower court.—Imprisonment, with labor, without irons for three (3) years.

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September 2.
Case of
HAREE.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The petition of appeal sets forth simply that the local authorities have not done the prisoner justice in this case, and he therefore appeals to this court. The charge is fully established, and I concur in the remark which I find recorded on the monthly statement by the judge (Mr. Colvin) in charge of the English department, that this was a “case of very gross and deliberate perjury, and the punishment might with propriety have been still more severe.”

Petition rejected.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND GUNGAPERSAUD GHOSE
versus
ECHYLN NOSHYA.

RUNGPORE.

1853.

September 2.
Case of
ECHYL NO-
SHYA.

Prisoner convicted of dacoity attended with wounding, and sentenced to ten year's imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, dacoity attended with wounding in the house of the prosecutor, and plundering therefrom property valued at rupees 864-9, on the 11th October 1852, corresponding with 27th Assin 1259 B. S.; 2nd count, with being an accomplice to the commission of the abovementioned crime; 3rd count, with taking and having in possession property acquired by the above dacoity, knowing it to have been so acquired, and 4th count, with having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity attended with wounding. Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 8th May 1853.

Remarks by the officiating sessions judge.—The particulars of this dacoity were fully reported in Statement No. 6, for the month of March 1853, in Case No. 4.

“The dacoity took place in thannah Chilmaree, on the 11th of October last, but the darogah was unable to find any clue to the dacoits until the close of December, when a Sadoo (witness No. 9) gave information, and the prosecutor went to the darogah and had the houses of the prisoners searched.

“The prisoners Nos. 15, 16 and 18 confessed before the darogah and magistrate, and prisoner No. 19, that he had purchased some of the property.

“Witnesses Nos. 1 to 3 and 9 prove a dacoity took place.

“Witnesses Nos. 8, 23 and 24 prove the property found to be prosecutor's.

" Witnesses Nos. 8 to 13 prove the mofussil confessions.

" Witnesses Nos. 15 to 18 prove the confessions before the magistrate.

" Witnesses Nos. 8 to 11 and 20 to 24 prove property Nos. 1 to 3, found in ashes in the house of prisoner No. 15, and No. 7 found under a tree near the house of prisoner No. 16, and Nos. 4, 5, 6, 9, 10 and 11 found in the houses of prisoners Nos. 16, 18 and 19.

" Before the sessions court, the prisoners all plead *not guilty*, and plead ill-usage by the darogah as the reason of their confessions, but their witnesses know nothing about it.

" I tried this case under Act XXIV. of 1843, and convicted the prisoners Nos. 15, 16 and 18, of dacoity with wounding, and sentenced to ten (10) years' imprisonment with labor and irons, and prisoner No. 19 I convict on the 3rd and 5th counts, and sentence to five (5) years' imprisonment with labor and irons."

The prisoner Echyl, who confessed before the magistrate and darogah, and in whose possession part of the stolen property was discovered, was, on the 24th of January, committed for trial with the other four prisoners convicted on the 7th of March last, but he escaped from the custody of his guards on the 26th of January and was not re-arrested until May, when he was sent to the sessions to stand his trial; the prosecutor, meanwhile, who is an Up-country man, has left this part of the country, and Government appeared as prosecutor.

Nos. 1, 3 and 5 witnesses prove that the dacoity took place and that the woman was wounded.

Nos. 5, 7 and 8 witnesses to the mofussil confession, which was voluntary and free.

Nos. 9 and 10 witnesses to the sudder confession, which was clear and voluntary.

Nos. 5, 14 and 15 recognize property No. 8 produced.

Nos. 7, 12 and 13 were present at the producing of the property No. 8 by the prisoner, who said it was the prosecutor's.

Defence of the prisoner.—Denies, but declines calling witnesses.

I tried the case under Act XXIV. of 1843, and found him guilty of dacoity, and sentenced accordingly.

Sentence passed by the lower court.—Imprisonment, with labor and irons, for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The confessions of the prisoner are duly verified, and the property found in his house has been identified as part of that plundered from the prosecutor. The sentence is confirmed.

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September 2.
Case of
ECHYL No-
SHYA.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

BUBURDEE CHOWKEEDAR.

MOORSHEADABAD.

1853.

September 3.
Case of
BUBURDEE
CHOWKEE-
DAR.

A deposition of a witness, taken by a mohurir in the presence of the presiding officer, and when closed, signed by that officer, is not binding on a witness until it has been read aloud to him.

Conviction of perjury set aside accordingly.

CRIME CHARGED.—Perjury, in having, on the 28th May 1853, corresponding with 16th Jeyt 1260 B. S., intentionally and deliberately deposed (in the case of arson instituted by Rajiblochun, plaintiff,) under a solemn declaration taken instead of an oath, before the pundit of zillah Moorshedabad, exercising powers of magistrate, that he did not know any thing good or bad, and that he did not seize Mudhoo Barooce at the time of setting fire to the thatches of the plaintiff's wall ; and in having, on the 31st May 1853, corresponding with 19th Jeyt 1260, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said officer, that he saw the defendant set fire to the thatches of the wall of the plaintiff, and that he apprehended him at that time : such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer—Pundit Muddun Mohun Turkalunkar, exercising powers of a magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 15th July 1853.

Remarks by the sessions judge.—The prisoner pleaded *not guilty.*

The particulars of the case are as follows :—

The prisoner was a witness in a case of arson, which was instituted by Rajiblochun against Mudhoo Barooee. In his evidence in that case, he at first stated upon oath, on the 28th May last, before the pundit, that he knew nothing of the case, or as expressed by him, in the Bengalee idiom, “he did not know any thing good or bad, and that he did not apprehend the defendant Mudhoo Barooee ;” and again, on the 31st May 1853, on being examined, he deposed upon oath before the said officer, that he saw the defendant set fire to the *choppers* attached to the wall belonging to the prosecutor, and that he apprehended the defendant. These two statements were contradictory to each other, and the pundit committed the prisoner to the sessions for trial.

During the trial of the case before me, the witness A, Nuddear Chund Sircar, stated, that on the 31st May 1853, when the deposition of the prisoner B, which was taken on the 28th May, was being examined by the pundit, the prisoner B

deposed before that officer, in his (A's) presence, that he (B) saw the defendant (Mudhoo Burooee) set fire to the *choppers* of the prosecutor. The prisoner's (B) deposition of the 31st May was shown to the witness A, and he (A) acknowledged that it was taken before the pundit in his (A's) presence, and that the prisoner had declared that he did not state any thing in his deposition of the 28th May other than what he stated on the 31st.

The witness Lalbeharee Burrall deposed to having been present in the pundit's court on the 31st May 1853, when the deposition of the prisoner was taken, and that the deposition of the 28th May was examined by the pundit in his presence.

The witness Mahomed Junghor stated, that the deposition, which was given by the prisoner on the 28th May, was examined by the pundit on the 31st idem, when he was present in the court. In the deposition it was written, that he (the prisoner) knew nothing of the setting fire to the premises, and that subsequently he heard that the prisoner admitted that the house was set on fire in his presence.

The witness Deenonath Mookerjea, mohurir of the pundit's court, stated, that on the 28th May 1853, the deposition of the prisoner, upon oath, was taken down by him in writing before the pundit. In that deposition, the prisoner stated that he knew nothing good or bad about the case; it was attested, but not examined by the pundit on that day. That on the 31st May, while the above deposition was being examined by that officer, the prisoner, on being questioned, stated on oath, that he saw the defendant set fire to the *choppers* of the prosecutor, and that both these depositions were written by him.

The pundit Muddun Mohun Turkalunkar appeared before me at my request, and stated on oath that the answer of the prisoner to the charge was taken down in his presence and written by a mohurir on the 9th June 1853, and that some of the questions therein recorded were put by him to the prisoner.

The prisoner, in his defence before me, pleaded ignorance and denied that he had stated in his depositions any thing contradictory, and that whatever he had stated before the darogah, he had repeated before the pundit. That he did not acknowledge in his defence before the pundit that he had stated any thing false.

There was no witness for the defence.

The assessors, Moulvee Syud Abdool Wahid Khan, principal sudder ameen, and Moulvee Abdool Jubbar, law officer, who sat on the trial, declared the prisoner guilty of the offence with which he was charged.

The charge is proved by the prisoner's admission before the pundit, when put upon his defence. The law makes a

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distinction wherein two contradictory statements, the first contains a falsehood and the second the truth, and the decisions of the Sudder Nizamut Adawlut show that the consideration of a difference in the degree of guilt, in such instances, has been allowed to lessen the punishment. Although perjury is very common, and a severer punishment generally is more likely to check it, still, under the opinion above given, I do not, in this case, see any necessity for inflicting a heavier sentence than imprisonment for six (6) months with labor, which I would recommend.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—The contradictory statements of the prisoner, which form the basis of this charge against him, are alleged to have been made by him on the 28th of May and on the 31st idem ; but the mohurir, who took down the prisoner's deposition on the 28th, states that it was written by him while sitting somewhere in the presence of the pundit, and when closed, was signed by that officer, but *without reading it aloud*, to satisfy the prisoner or the court of its correctness. A deposition so taken, though upon oath, without being heard by the presiding officer, cannot be held to be binding on the witness, until its correctness has been ascertained by the direct assent of the deponent. I therefore think that part of the deposition, which was taken on the 28th of March, is bad from its own informality, and cannot be fairly used against the prisoner, notwithstanding his admissions when examined by the pundit on the 9th of June. The prisoner is therefore acquitted.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

FUKEER MUNDUL (No. 1,) ALEE MUNDUL (No. 2,) NUZEEB SIRDAR (No. 3,) JUMEEROODEEN SIRDAR (No. 4,) KHEDOO GHURAMEE (No. 5,) ABEER MUNDUL (No. 6,) MOKEEM MUNDUL (No. 7,) KALOO PEADAH (No. 8,) BANOOJA MUNDUL (No. 9,) ANARDEE SIRDAR (No. 10,) HOSSEIN SIRDAR (No. 11,) HANEEF SIRDAR (No. 12,) KUREEM MUNDUL (No. 13,) BYRAGEE MUNDUL (No. 14,) AND MOLLEE MUNDUL (No. 15).

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Case of

FUKEER
MUNDUL and
others.

Several prisoners convicted of riotously assembling, resisting and assaulting the police in the execution of their duty and plundering property. Appeal rejected.

CRIME CHARGED.—Prisoners Nos. 1, 2 and 6, 1st count, riotously assembling and resisting the police of *thannah* Tannore, in the discharge of their duty, and severely beating and wounding Rajchunder Sandial, darogah, and Toolsce Singh and Jchan Khan, *bukundauzes* of that *thannah*, and beating Hazaree and Humzoo, *bukundauzes*, also Chundun Shah and Mokeem Mundul; 2nd count, riotously assembling and forcibly attacking and plundering the *zemindaree cutcherry* of Doorgamohun Chowdree, in Benshuhr village, and the houses of Mokeem Mundul and Beendala Mundul, Lokenauth Shah and Chundun Shah, of that village: this plundering not amounting to dacoity; 3rd count, accomplices to the above charges. Prisoners Nos. 3, 4 and 5, 1st count, riotously assembling and resisting the police of *thannah* Tannore in the discharge of their duty, and severely beating and wounding Rajchunder Sandial, darogah, and Toolsce Singh and Jchan Khan, *bukundauzes* of that *thannah*, and beating Hazaree and Humzoo, *bukundauzes*, also Chundun Shah and Mokeem Mundul; 2nd count, accomplices to the above charges. Prisoners Nos. 7, 8, 9, 10, 11, 12, 13, 14 and 15, 1st count, riotously assembling and forcibly attacking and plundering the *zemindaree cutcherry* of Doorgamohun Chowdree, in Benshuhr village, and the houses of Mokeem Mundul and Beendala Mundul, Lokenath Shah and Chundun Shah of that village: this plundering not amounting to dacoity, and 2nd count, being accomplices to the above charges.

CRIME ESTABLISHED.—Prisoners (Nos. 1, 2 and 6,) accomplices in riotously assembling, resisting and assaulting the police in the execution of their duty, and in plundering property. Prisoners (Nos. 3, 4 and 5,) accomplices, in riotously assembling and plundering property. Nos. 7, 8, 9, 10, 11, 12, 13,

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Case of

FUKEER

MUNDUL

and others.

14 and 15, accomplices, in riotously assembling and plundering property.

Committing Officer—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. H. Stainforth, officiating commissioner of Rajshahye, with powers of a sessions judge, on the 13th June 1853.

Remarks by the officiating commissioner.—On the 29th of March, a petition was presented at the *thannah* of Tannore, on the part of Huromohun Sirkar, *jotedar* of *kismut* Ben-shuhur, stating that about 200 persons, adherents of Rajcoomaree Chowdrain, *zemindar* of Lalpole, were assembled with intention to break up the *haut* of Benshuher and improving that of Lalpole.

The *darogah* issued the usual notices to keep the peace, and deputed a *bukkundauze*, named Hazaree, to arrest such persons as might illegally assemble.

On the 30th idem he reported, that understanding from the petition of the parties, and the report of the *bukkundauze*, that persons were collected on each side, he had gone to the place of the expected disturbance, and saw a number of men congregated on the plain of *mouzah* Lalpole, who went into the village on seeing the police; that Hazaree, the *bukkundauze*, reported that a number of persons was assembled on the part of Rajcoomaree, in a house formerly occupied by one Bukhtyiar Mundul, and that on his attempting to arrest them, he was struck by one Adum Dagee, and he added, that he (the *darogah*) apprehended 93 men, and was bringing them to the *thannah*, when they were rescued by about 200 others, and that a number of persons then came back at the instigation of Fukeer Mundul (prisoner No. 1) and assaulted him, and some *bukkundauzes*, beating him so that he became senseless, &c.

The *darogah* of Tannore being disabled, according to the civil surgeon's deposition, by fracture of the blade-bone of the right arm and other injuries, the *darogah* of Beauleah was deputed to investigate the case, and the result was the committal of the prisoners.

The prisoners all pleaded *alibi*, and adduced some witnesses to substantiate this plea. These have, most of them, given evidence in support of it, but holding the prisoners fully proved guilty of the offences of which they have been convicted, and deeming it only necessary to sentence leaders to a long period of imprisonment, I have sentenced Fukeer Mundul, Alee Mundul and Abeer Mundul, each to (7) seven years' imprisonment in labor and irons, and the remainder to (2) two years' imprisonment, with labor, commutable with a fine of 30 rupees.

I must notice with reprobation the conduct of the police *darogah*, Rajchunder Sandial, who went to the place of the dispute on an elephant belonging to Doorgamohun Chowdree, the proprietor of Bensuhur. This doubtless led the Lalpore party to believe that he would not do them justice, which must have been confirmed by the fact, he only attempted to arrest the partizans of one side, which fact he has attempted to justify on the ground that he had so many prisoners, that he would not look after the other side; and though his reprehensible conduct is no justification of the offences of which the prisoners have been convicted, I have taken it into consideration in sentencing them.

The *darogah* has been removed to another *thannah*.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The resistance to, and attack on, the *darogah* and police, and subsequent plunder of the *haut*, appear to me to be fully proved against all the prisoners.

The evidence of the witnesses is consistent throughout, in their depositions before the magistrate and officiating commissioner, and the identity of the prisoners is fully established. I see no reason to interfere with the order of the officiating commissioner with powers of sessions judge.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND DAMOODAR CHRISTIAN
versus
GUDDADHUR CHRISTIAN (No. 1 APPELLANT,) KA-
MOO ALIAS KAMDEB CHRISTIAN (No. 2 APPELLANT,) AND
KALACHAUND SIRDAR CHRISTIAN (No. 3 APPELLANT).

CRIME CHARGED.—1st count, Nos. 1, 2 and 3, dacoity in the house of the prosecutor, Damoodar Christian, and plunder of property to the amount of rupees 18-7; 2nd count, Nos. 1, 2 and 3 being accomplices in the above crime, and 3rd count, No. 1, further charged with receiving the plundered property, knowing it to be so plundered.

CRIME ESTABLISHED.—No. 1, dacoity, and having in his possession plundered property, knowing it to be such, and prisoners Nos. 2 and 3, of dacoity.

Committing Officer—Mr. E. A. Samuels, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 4th July 1853.
years' imprisonment. Appeal rejected.

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Case of
GUDDADHUR
CHRISTIAN.
and others.

Three pri-
soners con-
victed of da-
coity and sen-
tenced to eight

1853.

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Case of
GUDDADHUR
CHRISTIAN
and others.

Remarks by the officiating additional sessions judge.—A dacoity was committed in the house of the prosecutor, in which property to the value of rupees 13-7 was carried off. The dacoits entered the roofless house, in which the prosecutor and his wife were sleeping, by removing a screen or fence made of leaves, and began assaulting the former. The latter, who was standing by her husband, appears to have taken a *dao*, which was under the pillow, with the view of defending him, and was immediately struck on the arm with *lattees* and deprived of the weapon. She was then forced down, and a silver necklace wrenched off her neck, and an armlet and bangle from her arm and wrist. The dacoits were eight or nine in number, and carried four torches, from the blaze of which the prosecutor and his wife distinctly identified the prisoners. They were almost in contact with them, and having belonged to the same community of native Christians, were all known to, and easily recognized by, them. They were moreover foremost in the attack and took an active part in the plunder. Their names were mentioned both by the prosecutor and his wife to the neighbours, who flocked to their house immediately after the occurrence at night, and to the police who came to make inquiry in the morning. This recognition is above all suspicion, and I thoroughly believe it.

There is evidence also clear and consistent, showing that the prisoner, Guddadhir Christian, pointed out some beads of a *tabeez* secreted under mud at the side of a tank, which corresponded with those which were found on the mattress in the prosecutor's house after the departure of the dacoits, and formed part of an ornament worn by his wife, which appears to have become unstrung in the bustle at the time of robbery. The prisoners are said to have made confessions of crime before the police, but the magistrate mistrusts these confessions, and is of opinion that there is much reason to suspect that they were extorted. He has dismissed the darogah in consequence of the suspicion, and rejected the confessions. I set them aside also. The prisoner, Kamoo *alias* Kamdeb Christian, confesses before the magistrate that his confession amounts only to privity or possessing a guilty knowledge, and denies actual perpetration of the dacoity. All the prisoners deny the charge before this court, Guddadhir and Kalachaund pleading that this accusation has been brought against them by the prosecutor, for having on one occasion refused to eat in his house and citing witnesses in proof. The prisoner, Kamoo, confines himself to a repudiation of his confessions, but declines calling the witnesses named to his defence. The witnesses examined for the other two prisoners do not establish the pleas set up,

insufficient, though they be. I convict the prisoners, and in passing sentence on them, have regard to the magistrate's opinion, in which I fully concur, that this is, in all probability, the first occasion that they have been concerned in the perpetration of robbery by open violence, and that there are grounds for believing that even this was *unpremeditated*.

Sentence passed by the lower court.—Imprisonment, with labor and irons, for eight (8) years each.

Remarks by the Nizamut Adawlut. (Present: Mr. J. Dunbar.)—After a careful consideration of the evidence, I see no reason to question the correctness of the finding of the sessions judge. The sentence is confirmed.

PRESENT:
J. DUNBAR, Esq., Judge.

SHEIKH AMEER SIRCAR AND GOVERNMENT
versus
AKALEE MALOW (No. 1) AND LOCHUN MALOW
(No. 2 APPELLANT.)

CRIME CHARGED.—Prisoner No. 1, 1st count, wilful murder of Bazit Sheikh; 2nd count, accomplice in the above crime. Prisoner No. 2, 1st count, accessory after the fact of the above crime, and 2nd count, privity to the above murder.

CRIME ESTABLISHED.—Prisoner No. 1, culpable homicide and No. 2, privity and accessory to the same.

Committing Officer—Mr. R. Alexander, officiating joint-magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 4th July 1853.

Remarks by the officiating sessions judge.—From the admission of the prisoners and the evidence of the prosecutor, Ameer Sircar, and witnesses Nos. 12, 13, 14, 15, 16, 17, 18 and 19, it appears that the deceased, who was a man of a loose character, entered the house of Ramjoy Malow (not yet apprehended) at about midnight, with some evil design; that Ramjoy, who took him for a thief, immediately caught him and called out to his brother, prisoner No. 1, who awoke and came to his assistance; that Ramjoy was assaulting him with a stone used for mixing *curry* spices with, when he entreated them not to assault him; the prisoners then asked him the reason of his improper visit, when he replied that it was to injure their character, having been put up to enter the house of another female by their neighbours, whose house he mistook; this enraged the prisoners so much, that Ramjoy inflicted on him a severe blow on the temple with a log of wood, which

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Case of
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another.

One pri-
soner con-
victed of cul-
pable homi-
cide and anoth-
er of privity
before the
sessions judge.

In appeal
the sentence
on the former
was reduced
and the latter
acquitted.

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another.

immediately felled him on the spot and he died shortly after ; that No. 1 also assaulted him with kicks and blows of the fist and when life was extinct, prisoner No. 2, who was in the same house, advised them to throw the corpse away, which they did, and placed it in an uninhabited *baree* at a long distance from their house, where it was discovered next day, and forwarded to the station for medical examination. The civil assistant-surgeon deposed on oath, that death appeared to him to have been caused by severe injuries of the chest, which was severely bruised ; eight ribs on the right side, and six on the left, being fractured, the head, back, arm and legs being also severely bruised ; and that these injuries could have been produced either by the stone or piece of wood shown him, and the deceased must have died almost immediately after receiving such injuries. The prisoner No. 1, in the mofussil and before the magistrate, confessed having assisted his brother, Ramjoy, in assaulting the deceased in the manner described above. In this court he denied the charge, but gave a similar account of the affair, and acknowledged his mofussil and foujdaree confessions. Prisoner No. 2, in the mofussil and the foujdaree, acknowledged having advised No. 1, and Ramjoy to throw the body away. In this court he denied having so advised them, and urged enmity with witnesses Nos. 14, 15 and 16. No. 2 only named witnesses to the plea of enmity set up by him, and they deposed to having heard of the enmity. It has been clearly proved that No. 1, assisted his brother, Ramjoy, in assaulting the deceased so severely that he immediately died, and that No. 2, who is their cousin and lives in the same house, was present at the moment, and that instead of rescuing the unfortunate man from the severe ill-treatment he was undergoing, advised them to throw the body away when he died. I therefore concurred in the *futwa* of the law officer, which convicted No. 1 of culpable homicide and No. 2 of privity and being an accessory to the same.

Sentence passed by the lower court—Prisoner No. 1 imprisonment, with labor and irons, for seven (7) years, prisoner No. 2, imprisonment, without irons, for three (3) years and a fine of rupees fifty (50) or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar).—Prisoner No. 2, Lochun Malow, has appealed, but the whole case has been fully revised by the court. It is clear that the deceased (a Mahomedan) made his way into the house of the prisoners (Hindoos) at the dead of night, either for the purpose of theft, or with the design of getting at their females. In either case, it is not to be wondered at, that the men of the family, on being aroused and getting hold of him, proceeded to inflict summary punishment. The prisoner

says, that a blow inflicted by Ramjoy killed him, but whether this be true or not, there is no evidence to show that there was any intention to deprive him of life. According to his own confessions, Akalee Malow took but a small part in the assault. The conviction is good against him, as violence was used after the man was in their power, but the circumstances have in them so much that is extenuating, that I do not think the case is one which calls for a heavy punishment. I accordingly reduce the sentence against Akalee Malow from seven (7) to three (8) years' imprisonment with labor: the latter commuted to a fine of rupees seventy-five (75,) payable within one month under Regulation II. of 1834.

In the case of Lochun Malow, I do not think the evidence is sufficient for conviction. It is true the darogah in his report records his opinion, that this man advised the removal of the body with a view to concealment, but this is not borne out either by the evidence of the witnesses or by the admissions of the prisoner. All that is to be gathered from these is, that on seeing that the man was actually dead, he advised that the body should be taken away. It was accordingly carried forth to a short distance, but no attempt was made to conceal it. In this I find no guilty privity, and therefore acquit the prisoner.

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MALOW and
another.

PRESENT:

J. DUNBAR, Esq., *Judge*,

AND

H. T. RAIKES, Esq., *Officiating Judge*.

GOVERNMENT

versus

KOOSHAEE MISTREE.

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—
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Case of

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MISTREE.

Prisoner charged with theft by administering intoxicating drugs, acquitted by the Court owing to the insufficiency of the evidence.

CRIME CHARGED.—1st count, theft of gold and silver ornaments, valued at rupees 138, from the person of Munmohenee Raur, while she was in a state of insensibility caused by intoxicating drugs, administered by the prisoner, and 2nd count, being accomplice in the above crime.

Committing Officer—Mr. E. A. Samuells, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 19th August 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with drugging and theft, and pleads *not guilty*.

The occurrence took place in June 1851, and its particulars are as follows:—The witness No. 1, Munmohenee Raur, is a Calcutta prostitute, and was visited five or six times by the prisoner before the robbery took place. On the last occasion, he came in company with two other men and persuaded her with some difficulty, to visit a garden in the suburbs of the town. She took a young sister with her, about eight years old, and arrayed herself in gold and silver ornaments. The party got into a carriage provided by the prisoner and his associates, and reached the garden about 5 p. m. The garden gate was locked when they arrived, but opened by the witness No. 5, Ukur Malee, whom the prisoner called by name for that purpose.

After they had been some little time in the garden, they sat down to a refection of sweetmeats which the men had brought. After the repast, the prisoner offered Munmohenee some *pawn*, which she took, but had scarcely eaten, when she began to feel very faint. She asked the prisoner if he had mixed anything with the *pawn*, but he scouted the idea. She then became sick and at last fainted away. Some water was thrown over her face and person, which revived her a little, but she soon became utterly unconscious and in a state of stupor. What occurred while she was in this condition, she does not know, but she believes from what she has heard that she remained unconscious two nights

and a day, and was found in that state on the road leading to her house by the neighbours, who apprised her mother of the circumstance and assisted that individual to remove her up-stairs to her lodgings. When she returned home, she was stripped of all her ornaments. She describes the jewels she wore and mentions their value, and adds that her little sister was also robbed of a pair of silver anklets.

There are a few discrepancies in her statement before this court, and that given before the magistrate and police darogah two years ago, but they are not important, and the whole is a wonderfully clear and consistent recital and goes far to convince me, that nothing but fact could have produced such indelible impressions.

The evidence of the gardener, Ukar Malee, goes to prove that three men, a woman and a little [redacted] visited the garden in question about the time mentioned ; that he opened the gate to let them in ; that the party sat down to a refreshment, a short time after they had entered the garden ; that he was required to fetch some water, which he did in a *lota* ; that the vessel was received by one of the men at the door of the summer house, to which the party had retired ; that he then went to cook his dinner, desiring the visitors to go away as it was getting late ; that when he returned to lock the garden-gate, he found the place empty. He distinctly recognized the witness, Munmohenee as the woman, and her sister, Prosono, as the little girl, whom he saw on the occasion in question, but had some misgivings as to the precise identity of the prisoner, though he expressed his belief that he was one of three men then and there present.

As Muumohenee had mentioned in her deposition that her mother was present, when she left home with her sister, in company with the three men, I sent for and examined that individual and her testimony has proved very valuable corroborative evidence. Her account of the visit of the prisoner and his two friends, and their departure in a carriage, in company with her two daughters, on an excursion of pleasure to one of the suburban gardens, tallies in all respects with that given by Munmohenee. She then states, that after gun-fire, the same evening, one of the men, Jia by name, brought her youngest daughter back in his arms, and on her interrogating him as to where her sister Munmohenee was, informed her that she was waiting for her hire and would be home presently. This answer, it appears, did not satisfy the mother, who expressed an ardent desire to go in search of her daughter, and with that view walked some distance towards the garden in question, accompanied by Jia. Getting fatigued, however, she called a coach and both of them drove in it to the garden, where Jia asked

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the malee if the baboo was gone. On receiving an answer in the affirmative, they were returning home, when Jia got out of the carriage on the plea of relieving nature, and never showed his face again. The witness then drove home and spent the night in making lamentations for her daughter. In the morning early, the neighbours informed her that her daughter, Munmohenee, was sitting at the gate in an unconscious and torpid state; and going to the spot, she found her in that plight and brought her up to her rooms. She says she bathed her with the view of restoring consciousness, but to no purpose, and that Munmohenee remained in that condition for two nights and a day. She adds that the moment Munmohenee recovered her senses, she told her that the prisoner had taken her jewels, and that mother and daughter went to his house to demand them, but that [redacted] was from home and his mother drove them away from his house. Her deposition concludes by describing how they laid the information of the drugging and robbery, at one of the police stations in the town, and detailing the nature and value of the jewels worn by her daughters on the occasion, not a single article of which was found on their persons on their return home.

Now, considering that this witness was not named in the calender, and never examined before, and that her attendance at this court was caused without any previous notice, I cannot help regarding her evidence as a strong corroboration of the incidents detailed by her daughter, Munmohenee.

The witnesses, Rajchunder Mundul and Surup Kibert, prove that a *sooruthal* or inquiry on the spot was made, relative to the transaction by the mohurir of the Manicktolah thannah, in which nothing particular was elicited.

At this stage of the trial, I directed the magistrate to ascertain from the chief magistrate of Calcutta, what were the habits and mode of life of the prisoner, and whether he had absconded during the last two years on account of any criminal charge brought against him; and if so, what was the nature of that charge.

On the 19th instant, the chief magistrate's reply reached me, and the only information it conveyed was, that the prisoner bore a good character and earned his living by working as a carpenter with his father.

The prisoner, in his defence, states, that this charge has been trumped up against him by the witness Muumohenee, in consequence of his having put her out of his house as a disreputable person, on an occasion that she came there to seek the man Jia, her lover, and was speaking to his (prisoner's) wife, and cites witnesses to prove that Munmohenee threatened to be revenged for the insult, and that he bears a good character,

Five persons depose on his behalf, and establish the latter point. One of them speaks to the threat of vengeance used towards the prisoner by Munmohenee, but assigns a cause for the act quite different from that stated by the prisoner.

The magistrate's record abundantly and satisfactorily proves, that the prisoner and his associates fled from the town immediately after the occurrence, that their flight was formally proclaimed, and a reward offered for their apprehension, which in the instance of the prisoner was claimed by and awarded to Kazimalee, jemadar of the Manicktolah thannah, two years after the event.

The *futwa* of the law officer acquits the prisoner for want of evidence and declares him entitled to his release.

I dissent from the finding, and briefly sum up the evidence, on which I convict the prisoner on violent presumption of being an accomplice in the crimes charged ; Munmohenee's testimony which is above all suspicion, proves that the prisoner and two others took her sister Prosono away in a carriage, on an excursion of pleasure to a particular locality, both sisters having on their persons gold and silver ornaments distinctly specified ; that they took some refreshment there, and that she, after eating some *pawn*, which the prisoner gave her first, became sick and faint, and eventually lost all consciousness, notwithstanding the application of cold water to her face and person. The statement of the gardener, Ukur Malee shows, that these sisters visited the locality in question in company with three men, one of them bearing a strong resemblance to the prisoner ; and that he, on that occasion, brought a *lota* of water from a tank, at the requisition of some of the party, which he was made to deliver at the door of the summer-house in the garden, to which they had retired after a refection : and the evidence of Pudo Bewa just as trustworthy as that of Munmohenee, identifies the prisoner as one of the party who accompanied her daughters on the expedition ; that his comrade, Jia, brought back the younger after gun-fire the same evening, without any ornaments, and accompanied her, Pudo, to make an ineffectual search for the elder, in the course of which he absconded, and describes minutely the totally unconscious state in which Munmohenee was left at her door on the following morning, stripped of every article of jewellery, and how she remained in that state for several hours ; then comes the incontrovertibly established fact of the prisoner's flight, from that period up to his arrest in February last, and lastly, the total failure of the only tangible plea set up by him in defence. Here is the drugging sworn to, its effects undeniably patent, the robbery fairly inferred, and the prisoner identified and associated with each of these events. Entertain-

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MISTREE.

ing these views, I refer the case for the orders of the court, with a recommendation that the prisoner be sentenced to seven (7) years' imprisonment, with labor, in irons.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Raikes.)—We cannot concur with the sessions judge, in considering the evidence in this case sufficient for conviction ; *first*, there is no proof whatever, independent of the evidence of the woman Munmohenee and her mother, of the substance of the crimes charged. Not a single independent witness has deposed either to the fact, that the prostitute and her little sister did set out on the expedition to the garden, with their jewels on, or that the latter was brought home the same night, and the former found the next day near the door in a state of insensibility ; *secondly*, the contradictions in the depositions of Munmohenee are such as cannot be reconciled. In the foudaree she said that the prisoner had taken her home next morning—on the trial she denied this. In the foudaree she said she had known Jyelal for one year, and the others only three or four days. On the trial, she said she had known the prisoner for five or six days, and Jyelal and Nobeen only from the day of the alleged occurrence ; *thirdly*, Pudo, the mother, deposes that, after her little daughter was brought home by Jyelal, she drove with him to the garden, and was told by the malee, that the others had left : the malee himself says not a word about this. She further deposes, that the prisoner, Kooshacee, was not known to her daughter by that name, but that nevertheless they went straight to the house which he occupied under that name.

The case for the prosecution being thus weak, the evidence for the defence is entitled to the most favorable consideration. That evidence proves that the prisoner is a man of good character, that he did not *abscond*, and that he has been earning his living as a carpenter with his father.

On these grounds we acquit the prisoner and direct his immediate release.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND OOMUR SIRCAR

versus

PRANMONEE AORUT.

CRIME CHARGED.—The prisoner is charged with maliciously attempting to set fire to the house of the prosecutor.

CRIME ESTABLISHED.—Maliciously attempting to set fire to the house of the prosecutor.

Committing Officer.—Mr. R. H. Russel, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore.

Remarks by the officiating sessions judge.—This was a simple case of arson. The prosecutor and witnesses clearly prove the woman to have been caught in the act of attempting to set fire to the house. She confessed before the darogah and joint-magistrate, and although before the sessions she denies, she offers no defence beyond the palliation her husband's orders may afford.

It is on record that her husband is indebted to the prosecutor and has an enmity against him, and a strong suspicion exists of his being, as the woman says, with her at the time to see she carried out his orders. The law officer finds her guilty and I agree, but under these circumstances mitigate the sentence to three (3) years' imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner has fully admitted her guilt in her confessions, which are duly verified. Even had she not confessed, the evidence is sufficient for conviction. The sentence is confirmed.

RUNGPORE.

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September 8.

**Case of
PRANMONEE
AOKUT.**

Prisoner convicted of maliciously attempting to set fire to a house and sentenced (being a woman) to three years' imprisonment. Appeal rejected.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

JANAH NUSHA DAGEE.

RUNGPORE.

—
1853.

September 8.

Case of
JANA NUSHA
DAGEE.

Prisoner
convicted of
arson and
sentenced to
five years' im-
prisonment.
Appeal re-
jected.

CRIME CHARGED.—The prisoner is charged with arson in setting fire to the house of Ramkishen Dutt.

CRIME ESTABLISHED.—Arson.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 19th July 1853.

Remarks by the officiating sessions judge.—It is shown upon the trial that on the 10th of Bysakh (April the 21st), Ramkishen Dutt awoke early in the morning, and hearing a noise, as if some one was moving amongst the leaves of the trees, went out and saw that his house was on fire, and a man, whom he clearly recognized as the prisoner, running away. He gave the alarm, and Gooloo Chowkeedear coming up, recognized the prisoner and gave chase, but fell down, and the prisoner escaped. The neighbours came up and some saw Goloo in pursuit, but none of them could see who the man running away was; however Ramkishen Dutt told them the houses and all the property were destroyed. It is shown that the prisoner was a man of a bad character and that a quarrel existed between him and Ramkishen's family.

The prisoner pleaded *not guilty* and brought five witnesses, who establish nothing in his favour, and prove him twice to have been convicted of theft. The law officer, Golam Hossein, returns a *futwa of guilty*, and I agree with him and sentence accordingly.

Sentence passed by the lower court.—Imprisonment, with labor and irons, for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I see no reason to distrust the evidence. The fact of the prisoner being found close to the house of the prosecutor, at an unseasonable hour, just as the fire broke out, and of his immediately running off, affords reasonable ground for presuming that he was the incendiary. Sentence confirmed.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND ISSER MURMERY
versus
ISSER BAGDEE.

CRIME CHARGED.—Wilful murder of Soobhudhra Gwalinee. EAST BURD-WAN.
Committing Officer—Baboo Kissory Chand Mittra, deputy magistrate of Jehanabad.

Tried before Mr. H. F. James, sessions judge of East Burdwan, on the 20th August 1853.

Remarks by the sessions judge.—This is a case of murder. From the evidence in the case, it appears that the deceased, who was a Hindoo widow, of Gwala caste, formerly lived with her brother, Gobind Murmery, but she was induced to leave her brother's house some two years ago by one Nehab Bagdee, who provided her with a house in a neighbouring village, and kept her as his mistress there. This arrangement was displeasing to Nehab's two brothers, Nuffer and Isser, who frequently complained of his spending all his money on his mistress, and of his neglecting to support his wife, who lived at their house. This matter was the cause of many disputes and quarrels between the parties, and the two brothers had on two or three occasions threatened to punish the deceased, whom they looked upon as the instigator and chief cause of such irregular conduct on the part of their brother. With the two brothers also resided their mother and some other relatives, towards whose support the brother, Nehab, in no way contributed, which greatly incensed the brothers.

Witnesses Nos. 2 and 3 depose, that about 10 o'clock on the morning of the 6th of Sawun of last year (20th July 1852), they saw the prisoner, Isser Bagdec, close to the house, where the deceased, Soobhudra lived; indeed witness No. 3 states, that he saw him come out of the deceased's house, with a long bundle or bag on his head, and go across the fields to a nullah, a short distance from the village and throw the bag or load into the nullah. When the prisoner left the house of the deceased, he was accompanied by his brother Nuffer, who followed him a short distance towards the nullah, and then went away in a different direction. As soon as Isser had deposited his load in the water, he was observed to bathe and to hasten away to his own house. There is no distinct evidence as to whether, from the shape and form of the bag, or from any other circumstances which might have reached the ears of the villagers, the suspicion of the villagers was excited, but

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Case of
ISSER BAG-
DEE.

Prisoner
convicted of
privy to
murder and
sentenced to
fourteen years'
imprisonment.

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Case of
ISSUR BAG-
DEE.

it appears that the circumstances of the prisoner having carried some heavy substance to the *nullah* speedily, became the talk of the village, and the nephew of Soobhudra was told that his aunt had been murdered, and her body thrown into the *nullah*, at a certain spot, by the prisoner. He and a man named Nobin went to the *nullah* and there found the body of Soobhudra floating on the water in a sack.

The body was immediately recognized, and on the following day an inquest was held on the body by the police officers. The witnesses to the inquest state, that on examining the body several marks of violence were observable on the throat, and that the tongue was hanging out of the mouth, as if forced from it, and that some of the intestines protruded from the *vagina* and *anus*, and they all give it as their opinion that the deceased must have met with a violent death.

The body was sent into the station, but it was too much decomposed when examined by the civil assistant-surgeon, to enable that officer to form an opinion as to the cause of death. On the police officer's making the inquiry in the mofussil, the two brothers, Nuffer and Isser, who were suspected of the murder, were missing. Nuffer was, however, arrested on the 19th August 1852, and was tried for the murder of Soobhudra by the deputy magistrate of Jehanabad, and acquitted by that officer for want of proof, on 17th September 1852. The prisoner, Isser, was apprehended on the 11th March of this year, and was committed for trial to this court on the 29th April last. The witnesses, therefore, in giving their evidence, are speaking to facts, which occurred upwards of 12 months ago, and yet I can detect no contradictions and very few discrepancies, and I consider that full credit must be placed on the recorded evidence.

There is no doubt in my mind, regarding the deceased having met with a violent death. Had her death been accidental, it would not have been concealed, and her neighbours must have heard of it. The appearance of the body, too, after death, so fully explained by some of the witnesses, who closely inspected it, is sufficient proof of violence having been used. The examination or inquest of the body was held within 36 hours after the death, and the state of the body, at that time, cannot be attributed to the results or ravages of decomposition. The tongue was forced some inches outside the mouth, and the skin on the neck bore marks of violence, and on the face were spots of blood, and the entrails had been forced from the abdomen. Though none of the witnesses speak to the fact, that any thing connected with the deceased, or with the prisoner, had, during the previous night, come to their knowledge, yet it is very evident from the tenor of their evidence, that

when the prisoner was observed to carry away from the house of the deceased, the long kind of bag described by them, and throw it into the river, the murder of the woman was in some way associated with the circumstance, and in a short time after, the report of the murder of the woman, and the disposal of the body by the prisoner became a common village rumour. The carrying away of the body in a bag and the throwing of it into the water is clearly proved against the prisoner, the witnesses to that fact speaking to the circumstance in the most distinct and unimpeachable terms, and the subsequent finding of the body at the spot, where the prisoner deposited it, is equally well established by evidence.

The prisoner pleads *not guilty* before me. Before the police officers, his defence was not taken, which irregularity was pointed out by me; and before the magistrate he simply denies all knowledge of the murder and the facts with which he is charged. In my court he attempts to prove an *alibi*, but I do not consider the witnesses establish the fact. They are all men of low caste, chiefly of the Bagdee caste, and their evidence can have no weight in such a case. The prisoner himself is a very low caste man, and unfortunately connected. His father was sentenced to fourteen (14) years' imprisonment for dacoity in this jail, where he lately died; one of his brothers was imprisoned for five (5) years, being concerned in a case of murder; and his mother in the same case was sentenced to two (2) years' imprisonment.

The law officer sat with me in the trial of this case, and in his *futwa* convicted the prisoner of privy to the murder of Soobhudra, deceased, and limits the punishment to *acoobut*, and in reply to my question, under Clause III., Section II., Regulation LIII., of 1803, whether by the Mahomedan law, any specific punishment is laid down for the crime, of which the prisoner is found guilty, he declares that the punishment is at the discretion of the presiding power. I agree in the *futwa* of the law officer, and I convict the prisoner of being privy to the murder of Soobhudra, and of concealing and disposing of the body; and as I do not consider that I am competent to pass sentence adequate to the crime of the prisoner, I beg to refer the case to the superior Court, with a recommendation that the prisoner be imprisoned for fourteen (14) years, with labor in irons, in this zillah jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—That Soobhudra died a violent death, there can be no doubt. It is difficult to understand why the prisoner should remove the body from the woman's own house, in broad day, but the fact is established by the direct and positive evidence.

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Case of
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of Doorgachurn and Munnoo. The statements of these men have been consistent throughout, and they are borne out by the evidence of Neederam Ghose, who saw the prisoner running off from the place where the body was immediately after found. I concur in the conviction and sentence the prisoner, as recommended by the sessions judge, to imprisonment, with labor and irons, for the term of fourteen (14) years.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

MUNSOOR ALEE.

CHITTAGONG.

1853.

September 8.Case of
MUNSOOR
ALEE.

Prisoner convicted by the sessions judge of wounding with intent to murder.

In appeal the intent to murder was held not to be proved, and the sentence reduced.

CRIME CHARGED.—Severely wounding Banoo Bebee with a *dao*, with intent to murder the said Banoo Bebee.

CRIME ESTABLISHED.—Severely wounding Banoo Bebee with a *dao*, with intent to murder the said Banoo Bebee.

Committing Officer—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, officiating sessions judge of Chittagong, on the 18th July 1853.

Remarks by the officiating sessions judge.—The police have forwarded a *dao* or bill, as the instrument with which the wound was inflicted. There is not a particle of evidence to show that the wound was inflicted with this *dao*. The prisoner was captured at his own house, which the police searched, and in which they found a smaller *dao*; but on the prisoner's mother telling them that the prisoner was in the habit of using the *dao* of a relation, the police proceeded to secure that *dao*, and it is the one produced in court. The evidence does not show what became of the smaller *dao*, and the police, on obtaining the larger *dao*, desisted from all further search for the weapon. The police have not even inquired whether the prisoner had the loan of the *dao* produced in court on the day the crime was committed.

The witnesses examined in the case, with one exception, appear to have no standard for measuring either the time of day or distance; and consequently the greatest difficulty has been experienced in verifying the circumstantial evidence adduced in the case.

The evidence of the sub-assistant surgeon, of Hossein Alee and of other witnesses, proves that the interior half of the windpipe of the woman Banoo, was divided.

Futteh Alee, the husband of Banoo Bebee, deposes, that when

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ALEE.

he returned from work, probably before 11 o'clock A. M. on Sunday, 27th *Bysakh* 1260 B., or 8th May 1853, he found his wife sitting in a pool of water, with her throat cut. He carried her into the house, and went to his neighbours for assistance. The first neighbour, he found, was Hossein Alee, a sepoy in some Arracan local corps. He and other witnesses found the woman unable to speak, and breathing through the wound, and insensible. They poured water into her mouth, but it came out of the wounds. Fortunately the sepoy had seen wounds treated in hospital, and he volunteered to sew up the wound, and thus saved the woman's life. The sepoy sat up with the woman during the whole night, and his and other evidence shows that the woman continued insensible until a short time after the arrival of the police. On Monday morning, the 9th May, immediately the woman became quite sensible, the mohurir of the outpost recorded her deposition on oath. She deposed that she was left alone in the house on the morning of Sunday, and she thought she heard cattle eating the trees in the *bharee* or garden surrounding the house, and she went out to drive them away, when the prisoner suddenly sprung on her and wanted to have criminal intercourse with her and endeavoured to accomplish his object by force. On her resisting, he knocked her down; and at length he drew a *dao* across her throat, and knocked her into the pool of water. Her deposition is circumstantial and consistent, and she has adhered to it on every occasion without any inconsistency or contradiction up to the time of trial. Her statement was first made the moment she recovered from an insensibility of eighteen hours' duration, and her evidence is therefore entitled to peculiar credit. The prisoner was not unknown to the woman. She had at the time been married about two months; and the prisoner is a neighbour of her husband, and he was in the habit of visiting her husband. She deposed that he had before made advances to her, which however she never encouraged. Her evidence is not altogether uncorroborated. The prisoner went in company with the witness named Potun to thatch the house of their landlord at mouza Buriaeeyya, and when they arrived at a temple about six *kanees* (probably 300 yards) from the house of Futtah Alee, the prisoner made an excuse for leaving his companion, who proceeded on to the sea-side, where he for some time watched the people fishing. He then proceeded leisurely towards Buriaeeyya. At length the prisoner overtook him; and, the day being far advanced, they both commenced running towards Buriaeeyya. This witness deposes, that six *ghurries* (an hour-and-a-half) elapsed between the prisoner leaving and rejoining him. He admits, however, that ~~the~~

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ALEE.

mohurir suggested that measure of time to him. I found that the witness has no idea of the division of the part of the day between sunrise and noon, neither had he nor the other witnesses an idea, by which they could describe the distance of the village of Buraieeya from the house of Futteh Alee. The witness, Musst. Janoo, the nearest neighbour of the wounded woman, also deposes to seeing and speaking to the prisoner in the immediate vicinity of the house of Futteh Alee, on the morning of the 8th May. She states, however, that she thinks the woman's throat had not been cut at that time. Her only reason for this supposition is, that after she had seen the prisoner a third woman came to her house and said she had seen the woman Banoo Bebee.

The prisoner denies the accusation, and alleges that he was at the house of his talookdar at mouza Buraieeya, during the whole of the day in question. The prisoner called four witnesses to prove this fact. One of them deposes, that he saw the prisoner there, but the prisoner arrived before he did. The other three witnesses depose, that they saw the prisoner arrive at the house of the talookdar at an early hour of the morning of the 8th May, in company with Potun. The prisoner admits also, that he did arrive in company with Potun. Here again the witnesses have no idea of a measure of time. It must, however, be borne in mind, that Futteh Alee himself returned from work some time before the sun had reached the meridian, and as far as I can gather from the evidence, the woman's throat must have been cut between $9\frac{1}{2}$ and $10\frac{1}{2}$ A. M. The *futwa* of the law officer declares the prisoner liable to punishment on strong suspicion. The evidence of the woman Banoo Bebee, given immediately after recovering from a state of insensibility that lasted for eighteen hours, and again repeated before this court, and the evidence of two witnesses to the fact of the prisoner being in the close vicinity of the house of the woman on the morning of Sunday, the 8th May 1853, leave no reasonable doubt on my mind of his guilt. I can find no extenuating circumstance in the case; and I sentence him to imprisonment, with labor in irons, for the period of fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—I concur with the sessions judge in thinking the statement of Banoo Bebee entitled to full credit. It has been consistent throughout, and derives strong support from the evidence of Potun and Janoo Bebee, while the contradictory statements to which the prisoner has successively resorted, are certainly not favorable to him. In the mofussil, and before the magistrate, he distinctly said, that there was no enmity between him and Banoo, or her husband. On the trial he alleged former enmity

with the husband. In the petition of appeal, he says that there never has been any enmity, and that it is notorious that the woman was wounded by her mother-in-law, by whom she had been induced to accuse him. I do not think, however, that the conviction can be for wounding with intent to murder. If murder had been intended, it would in all probability have been effected; but that it was not intended, is clear from the first deposition of Banoo, made before the mohurir on oath, in which she says, that the prisoner before going away, adjured her solemnly, not to tell any one of all that had happened. I convict the prisoner of severely wounding Banoo Bebee, and sentence him to imprisonment for seven (7) years with labor and irons.

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 September 8.
 Case of
 MUNSOOR
 ALEE.

PRESENT :
 J. DUNBAR, Esq., Judge.

ASKUR MUNDUL AND GOVERNMENT

versus

BAKEE SHEIKH.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, from which property to the value of Company's rupees 1,226-8 was plundered, and 2nd count, privity before and after the fact.

 MOORSHEADA.
 BAD.

 1853.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 15th July 1853.

Remarks by the sessions judge.—It appears, that on the 3rd May 1853, at about midnight, 25 or 26 dacoits, armed with weapons, attacked the prosecutor's house, and having broken open the chests, &c., plundered property to the value of rupees 1,226-8. The prosecutor recognized, on the night of the occurrence, the prisoner Bakee Sheikh by his voice, and on his asking him how he, Bakee Sheikh, came to commit dacoity in his house, the prisoner ran after him with a sword, when Faizoolla Biswas, (witness No. 1,) struck the prisoner with a *lattice* and secured his arrest by the assistance of Panchee Sheikh and Deenoobundoo Chowkeedar (witnesses Nos. 2 and 3,) and made him over to the darogah the next day. Before the darogah, the prisoner Bakee Sheikh confessed and implicated Gopal Shaha and others. On searching the house of Gopal Shaha, a silver ornament called *tar* was found, and he was accordingly arrested and sent in to the magistrate. The prisoner Bakee Sheikh repeated his confession before the magistrate, but

 September 9.

Case of

BAKEE

SHEIKH.

 Prisoner
 convicted of
 dacoity on his
 own con-
 fession, and
 having been
 caught in the
 act.

 Appeal re-
 jected.

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Case of
BAKEE
SHEIKH.

denied in the sessions court. From the evidence adduced, it was clearly proved that the prisoner Bakee Sheikh was arrested at the time of the occurrence, and that he made his confessions both before the darogah and the magistrate voluntarily. It is further stated, that previous to the occurrence of the dacoity, he (the prisoner Bakee Sheikh) was a servant of the prosecutor for a year, and was dismissed on suspicion arising from the circumstance of his brother having been apprehended in a case of dacoity. While he was in the service of the prosecutor, he had made himself acquainted with the particulars of his house, and now, in connexion with others, committed this dacoity. Under these circumstances, considering the prevalence of this crime and the intention of Government to suppress the commission of it by severer penal enactments, and as the prisoner was once the servant of the prosecutor, the sessions judge finding him guilty, sentenced him as stated in the proper column. There was no proof in the case that the prisoner was a professional dacoit.

Sentence passed by the lower court.—Twelve (12) years' imprisonment, with labor and irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar).—On the trial, the prisoner said he had been persuaded by the burkundauze, who had charge of him, to make a false confession. In his petition of appeal, he asserts that he did so to oblige the prosecutor, and enable him to be revenged upon persons with whom he was at enmity. The facts, that he was taken *flagrante delicto* and that he twice made full and free confession, are clearly established. The sentence is confirmed.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

JAN MAHOMED.

CRIME CHARGED.—Perjury, in having on the 17th October 1851, corresponding with 1st Kartick 1258, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the magistrate of Tipperah, that “he saw Noorbuksh, Nunah Meah, and about twenty-five or thirty others on one side, and Asgur, Buksh Alee and thirty or thirty-five others on the other, all armed with *latees* and sticks, and committing an assault upon each other,” and in having, on the 2nd December 1851, corresponding with 17th Aghun 1258, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of the said district, that “he did not depose before the magistrate, as stated above, and that he saw Noorbuksh and others committing an assault with *latees* upon Munowar and others, who had no weapon with them, and that Asgur and Buksh Alee were not present at the time of the occurrence,” such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 5th July 1853.

Remarks by the sessions judge.—In the abstract statement of prisoners acquitted during the month of December 1851, a case of affray, attended with murder and wounding, is thus alluded to by my predecessor, Mr. Stainforth.

“In the column appropriated in the calendar to eye-witnesses, the names of seven persons are inserted, but three of them came up after the fight had taken place, while the remaining four, Jan Mahomed, Oozeer Sirkar, Shumshore and Musst. Shubjah, who, before the magistrate, had given evidence, implicating *both sides*, before this court, in contradiction of their *foujdaree* depositions, implicated *three of them only*, the *persons with whom they were at enmity*, while the fourth wholly denied witnessing the affray.

“It is clear that I could not convict on the testimony of such witnesses, and, as there was no further evidence against the persons committed, they have been acquitted and released.

TIPPERAH.

1853.

September 9.

Case of
JAN MA-
HOMED.

Prisoner convicted of perjury, in having made contradictory statements before the magistrate and at the sessions.

Appeal re-
jected.

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September 9.

Case of
JAN MA-
HOMED.

"Commitment of the four witnesses, who gave depositions before this court, contradicting those given by them before the magistrate on the material point above noticed, has been ordered."

Two of the witnesses thus referred to, Jan Mahomed and Musst. Shubjah, having been at length apprehended, were committed to take their trial on the charge of perjury.

The prisoner, Jan Mahomed, deposed before the magistrate, on the 17th of October, to the circumstances attending the case, in such a manner (and, I observe, he did the same at the thannah) as to render it clearly one of mutual affray. He stated that Noorbuksh Moonshee, his son, Nunah Meah, and others, about twenty-five or thirty men in number on the one side, and Asgur, Buksh Alee and others, thirty or thirty-five in number, on the other, were actively assaulting each other with *lattees* and sticks. Before the sessions court, on the 2nd of December following, he, in opposition to his previous description of the occurrence, deposed that Noorbuksh and those aiding him assaulted with *lattees* Munowar and others, who were totally unarmed, and the objects of the assault instead of parties to an affray.

A contradiction of this nature, and on so prominent a point, cannot, in my opinion, be attributed to a lapse of memory, or be deemed otherwise than intentional. It altered the entire character of the case, and led to the serious charge on trial before the sessions court falling to the ground. I should have added, that whereas before the magistrate the prisoner described Asgur and Buksh Alee as engaged in the affray, before the sessions court he deposes, that neither was present, Buksh Alee having run away, and Asgur concealed among some plants of the *arun*.

The prisoner, who pleaded *not guilty*, stated in his defence, that he had deposed to the same effect in both courts, but knew not what had been recorded.

Being of opinion, that the prisoner swerved from his first deposition, with the view of exonerating one of the two parties engaged in the affray from its consequence, and that he thus defeated the ends of justice, I sentenced him, as shown in column 12,—the Mahomedan law officer concurring with me in considering him *guilty* and liable to *tazeer*.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner's statements in the foudaree and sessions court, are directly contradictory, and the offence charged is proved against him. In his appeal he merely pleads that he gave evidence to the same purport as other witnesses who have not been punished. I see no reason to interfere with the sentence passed by the sessions judge.

PRESENT :
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND OTHERS

versus

NUBOKISHTO ALIAS NUBBYE HAJRA.

CRIME CHARGED—*Trial No. 5*, burglary, in which property, to the value of 3 rupees, was carried off. *Trial No. 6*, burglary, in which property, to the value of 3 annas and 3 pie, was carried off. *Trial No. 7*, burglary, in which property, to the value of 2 rupees 14 annas and 7 pie, was carried off. *Trial No. 8*, burglary, in which property, to the value of 4 annas and 3 pie, was carried off.

BACKER-GUNGE.

1853.

September 9.

Case of
NUBOKISHTO
alias NUBBYE
HAJRA.

Prisoner
convicted on
four different
charges of
burglary and
theft, sentenced
by the sessions
judge to seven
years' impris-
onment. Ap-
peal rejected.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 24th May 1853.

Remarks by the sessions judge.—The prisoner is charged in four separate calendars with four distinct thefts, in as many different houses committed on the same night.

He pleaded *not guilty* at the trial, as he had also done before the police and before the magistrate.

The evidence proved, that the chowkeedar was going his rounds, when coming to the house of Petamber Shah, the prosecutor, he saw two men running away, followed by two others. He cried out “thief thief” and gave chase. Three of the thieves escaped altogether, but one of them was seen to get into a small jungle not far from the prosecutor’s house, who with two or three others coming up in aid of the chowkeedar, the jungle was searched and the prisoner dragged out therefrom.

He confessed then and named his associates. The next morning, some property belonging to Petamber Shah and the prosecutors, in the three other cases, was found on the bank of a tank near the jungle in which the prisoner had hid himself. Morning discovered also that their houses had been likewise broken into.

The prisoner has denied throughout. His defence is, that at about 9 o’clock at night, he started from his house to pay his rent into the *surburakar’s* cutcherry in Herun village. On the road, he met the prosecutor, to whom he owed a little money. The chowkeedar came up at the moment, when the prosecutor demanded payment. Some words took place, when the chowkeedar gave the prisoner a shove, which he returned. On this the prosecutor and the chowkeedar laid

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NTBOKISHTO
alias NUBBEY
HAJRA.

their heads together and determined in accusing him of theft.

He named witnesses to prove that this was the way he was apprehended, but the parties called knew nothing of it.

The jury convicted him of the burglary and theft, and I gave him a consolidated sentence of seven (7) years' imprisonment, with labor and irons. The prisoner was before convicted of theft.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner was committed on four different charges of burglary and theft, and there is sufficient proof on the record to warrant a strong *presumption* of his guilt, and to justify convictions on all these charges. The prisoner, in his appeal, has only remarked in a general way, that the evidence against him is contradictory, but I see nothing of the sort, and therefore confirm the sentence passed on him by the sessions judge.

 PRESENT:

SIR R. BARLOW, BART., Judge.

MUSST. PATO BEWAH AND GOVERNMENT

versus

SHEIKH MOLAEM FAKEER (No. 7,) **SHEIKH EDOO** (No. 8,) **KANDOO FAKEER** (No. 9,) AND **SHEIKH KETRA** (No. 10.)

MYMENSING. CRIME CHARGED.—1st count, wilful murder of Ramjan Fakeer, and 2nd count, accomplices in the above crime.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 30th May 1853.

Remarks by the officiating sessions judge.—It would appear from the record, that prisoner No. 7 having married another woman, quarrels ensued between her and his first wife, which was the cause of the former, (witness No. 1,) having on several occasions left her husband's house for that of her sister, the prosecutrix, which led to an altercation between her husband (the deceased) and prisoner No. 7, and which was the cause of the prosecutrix's believing that an adulterous intercourse existed between her and deceased, although she repudiates any such connexion. From the statement of the prisoners themselves, and that of the eye-witnesses, it is evident that the deceased was seized by the prisoners in an *urhur* field, adjoining prisoner No. 7's house, on the plea of his being a thief, and who was assaulted so severely that he became insensible, after which they (the prisoners) made a hole in the

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SHEIKH
MOLAEM and
 others.

Prisoners convicted of culpable homicide, and sentenced to various terms of imprisonment by the sessions judge. Appeal rejected.

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others.

house to make it appear that it was made by a burglar whom they seized. Witness No. 1 states, that she and her husband were asleep, when at midnight the deceased tapped at the door, when the prisoner No. 7 came out and calling the other prisoners, they seized the deceased in the *urhur* field, assaulted him severely, and took him to his (prisoner No. 7's) house ; that there was no hole then in the house, but one was immediately made afterwards. Witnesses Nos. 2, 3, 4, 6, 7 and 8, state, that they were aroused from sleep on hearing a noise near the prisoner No. 7's house, and on going to see what was the matter, witnessed the assault on the deceased in the *urhur* field ; No. 7 having inflicted two or three severe blows on the head and back, and Nos. 8, 9 and 10, kicks and blows ; that they detained him for the night and next day carried him to the thannah, as a thief caught in the act of committing burglary, and prisoner No. 7 then stated that there had been an illicit intercourse between the deceased and his wife witness No. 1. The deceased was sent into hospital in a senseless state and died there three days afterwards, and the civil assistant surgeon deposed to his having died from inflammation of the brain and its membranes, accompanied with a fracture of the skull, and his scalp was severely bruised, as well as the arms, legs and back ; and he is of opinion, that these injuries must have been produced by blows of some heavy instrument such as the *latee* shown to him. In his answer before the police and the magistrate, the prisoner No. 7 accused the deceased of being a thief, who on making a hole in his house and taking away property, was seized by him and the other prisoners, that he inflicted four blows on the head, back, &c., with the *latee* ; and that the other prisoners also assaulted him, and that there had been an illicit intercourse between the deceased and his wife. The other prisoners had gone to sleep that night at prisoner No. 7's house ; they stated, that on prisoner No. 7 calling out that there was a thief, they followed him, seized the deceased in the *urhur* field, and assaulted him there. In the sessions court, prisoner No. 7 denied the charge, but stated that a thief having made a hole in his house for the purpose of stealing, he called out, when some of the eye-witnesses and others came out and assaulted him, but admitted that he gave him a blow or two. He denied his mofussil confession, and said he was induced to confess before the magistrate through intimidation by the police. Prisoners Nos. 8 and 10 denied the charge, repudiated their mofussil confessions and resorted to *alibi* for the defence. No. 9 also denied and stated that his mofussil confession was extorted, and that he did not know what he said before the magistrate. The witnesses,

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others.

cited by the prisoners, were unable to support the defence set up, denying all knowledge of the points on which they were summoned. It will be observed from the above, that although it is not apparent that there was premeditation on the part of the prisoners to assault the deceased, still the treatment he received was so severe, that it caused death, and no doubt from prisoner No. 7 bearing an ill-feeling towards the deceased, he took this opportunity of revenging himself. I therefore concurred in the futwa of the law officer, convicting the prisoners of culpable homicide, and sentenced them to what I considered the share each took in the crime. Ketrah, prisoner No. 10, was a mere boy of about 16 or 17 years of age, and a sentence of one (1) year's imprisonment on him, I considered to be sufficient.

Sentence passed by the lower court.—Prisoner No. 7, imprisonment, with labor and irons, for five (5) years. Prisoner No. 10, imprisonment, without labor or irons, for one (1) year, and prisoners Nos. 8 and 9, imprisonment, without irons, each for the period of three (3) years, and to pay a fine of rupees twenty-five (25,) or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart :)—It appears from the evidence of Sheikh Gadoo and four other eye-witnesses, that about 2 a. m., on hearing the prisoner No. 7 crying out, that a thief had been seized, they went out and saw the prisoners Nos. 7, 8, 9 and 10, beating a man in a field, close to the house of prisoner No. 7, to which they brought him. The deceased, Ramjan, was the individual, and No. 7 charged him with having entered the house through a hole, which he pointed out. The prisoner confessed before the police and the magistrate; No. 7 repeated his confession in his defence before the sessions judge.

There is every reason to believe, that the story of the burglarious entry is a false one. An intimacy between the deceased and the wife of prisoner No. 7, Musst. Soondeal, much more satisfactorily accounts for the untimely visit of the deceased at the prisoner's house; Soondeal denies the existence of any such connexion; but her own statements when compared with the confessions of her husband (No. 7,) leave but little doubt of the fact. The skull of the deceased was fractured, and was the cause of death, so that he must have received most severe injuries on the spot, in the field whence he was taken to the prisoner's house. He was again beaten there, by the prisoners and others in the presence at least of No. 7, who had taken a leading part in the assault outside the house. Making every allowance for the prisoner's feelings, he was not justified in proceeding to extremes, as he did, with the assistance of so many others, thereby causing the death of the

deceased. The prisoners have appealed. I confirm the sentences passed upon them. The sessions judge appears to have acted with too much leniency in the cases of the prisoners Nos. 8 and 9, who could not plead the provocation which No. 7 has set forth in his defence.

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Case of
SHEIKH
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others.

PRESENT:

J. DUNBAR, Esq., Judge.

MAHOMED SIIAHA AND GOVERNMENT

versus

MUNSHARAM DUTTO.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor's mistress, Chundra Bewa, in which property to the value of Company's rupees 142-2 was stolen, and 2nd count, privity, before and after the fact.

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CRIME ESTABLISHED.—Privity to the burglary before and after the fact.

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Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Prisoner
convicted of
privity to
burglary be-
fore and after
the fact, sen-
tenced to four
years' impri-
sonment. Ap-
peal rejected.

Tried before Mr. D. I. Moncy, sessions judge of Moorsheadabad, on the 19th July 1853.

Remarks by the sessions judge.—It appeared that on the night of the 10th June 1853, the house of the mistress of the prosecutor was broken through and property to the value of Rs. 142-2 was stolen therefrom. On the 12th June, the prisoner, Munsharam, gave 3 old Sicca rupees to one Dala Chokra for exchange, which the latter effected in a poddar's shop and returned him new rupees instead, but hearing that a theft had taken place in the house of Chundra Bewa, and that old Sicca rupees were stolen therefrom, he repaired to the thannah on suspicion, and deposed before the darogah as to what had passed between him and the prisoner Munsharam. The darogah accordingly arrested the prisoner Munsharam, and took his answer, in which he stated that he was accompanied by Ruffick Sheikh and others for the purpose of committing a robbery, but he remained in one place and did not go to the spot where the theft was committed; that the others returned and gave him 2½ annas share of their booty. Some other property, (*viz.*, 1 gold *goita*, *chick mala* and cash) which was left by them and lying on the ground, was found and picked up by him, and that of the cash, which he received, he spent some and kept the remainder, as also the other property in the empty house of Rooknee. The darogah accordingly went to the house of Rooknee, and, on the prisoner Bhoobun's having said that property might have been kept in that house, he searched

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the house and found therein the property above alluded to. The prisoner Munsharam repeated his confession to the above effect before the magistrate, as also before the sessions judge with certain alterations.

From the evidence of the witnesses to the confession of the prisoner and to the identity of the property, it was proved, that he made his confession before the darogah and the magistrate voluntarily, and that the property, *viz.*, gold *goita* and chick *mala* belonged to Chunder Bewa, and that they were discovered after search by the darogah, in the manner above stated. Under such circumstances, it is presumed, that the prisoner Munsharam had knowingly kept the above property in the house of Rooknee. The magistrate should therefore have charged him also on another count, with having knowingly received and possessed stolen property. In the absence of such charge the prisoner cannot be liable to punishment for that crime. From the tenor of the prisoner's confession, the charge of burglary has not been established against him. The assessors who sat at the trial, convicted the prisoner Munsharam of the crime with which he was charged by the magistrate, as stated in the calendar. One of the assessors considered the prisoner, Bhoobun, *not guilty*, and the other *guilty*. In the opinion of the sessions judge, the proof against Bhoobun has not been sufficiently established, and concurring in the verdict of the assessor who pronounced her *not guilty*, directed her to be acquitted, and differing from them with regard to the charge established in their opinion against the prisoner Munsharam, convicted him of privity to the burglary before and after the fact, and sentenced him, as stated in the proper column.

Sentence passed by the lower court.—Four (4) years' imprisonment, without irons, and to pay a fine of rupees fifty (50.) or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—As the prisoner clearly admitted, in his confession, having received 2½ annas in pice, as part of the booty obtained by the thieves, and as the gold ornaments pointed out by him were identified as belonging to Chundun Bewa, there certainly should have been a count in the indictment, charging the prisoner with receiving stolen property. Privity to the design of the thieves, and a knowledge that they had succeeded is evident on the prisoner's confessions. The conviction is therefore good, and the sentence is confirmed.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

BUDHOO (No. 1) AND BHATAN (No. 2).

CRIME CHARGED.—1st count, knowingly issuing counterfeit coins, and 2nd count, fraud.

CRIME ESTABLISHED.—1st count, knowingly issuing counterfeit coins, and 2nd count, fraud.

Committing Officer—Mr. W. F. Macdonell, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 4th July 1853.

Remarks by the sessions judge.—*Trial No. 1.*—The details of this case and of the two following cases are exactly similar, with the exception, that in each of them the prisoners made a different excuse for changing the counterfeit coin. In this case, they went to the shop of the witness, Musst. Bunwee, and on the plea of purchasing some potatoes, gave her a bad rupee and took the change for it. She wanted them to wait till she could ascertain whether it was good, but they both ran off, but being overtaken by a man who went after them, were captured, and brought to a party of police, who were passing along, when the rupee being shown to them, Budhoo swallowed it. Two other parties, however who had been defrauded in the same way, and on the same day, came forward with similar charges, and the result was their committal to the sessions on the three different and separate charges. On their trial, both prisoners deny their guilt, but they say nothing which can in any way raise a doubt in their favor, and as they are strangers here, it is quite improbable that the charge can have been got up from any ill-feeling towards them. The moulvee convicted them and made them liable by *tazeer*; but as both prisoners were implicated in two other similar charges, I thought it advisable to defer passing sentence till the whole of the trials was completed. The sentence eventually passed upon them, will be found in the last of the three cases.

Trial No. 2.—This case differs from the former only in the fact that it took place before it, and that the prisoners in this case purchased a different article (some small lacquered boxes) from the shop-keeper, and having got of him an 8 anna piece and some pice in exchange of the rupee (bad) they tendered, got clear off with it. The shop-keeper, however, heard that two men had been taken up on this charge, and he then proceeded

SARUN.

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Case of
BUDHOO and
BHATAN.

Prisoners convicted in three separate cases of knowingly issuing counterfeit coins and fraud.

In appeal sentence confirmed, but labor made commutable to a fine.

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Case of
BEDHOO AND
BHATAN.

to the thannah where he identified them both. They make the same defence in this as in the former case, and as their guilt is clear, they have been sentenced for the whole in the case which follows.

Trial No. 3.—This is the third charge brought against the same prisoners, and, like the last one, it was preferred after they had been apprehended. In this case they purchased some fire-wood and having paid for it, they left it with the shop-keeper till they should return from the bazar, which I need hardly say they never did. They make the same unsatisfactory defence, and their guilt also is equally clear in this as in the other two cases, therefore, they have, in concurrence with the *futwa* of the law officer, been sentenced for the whole to four (4) years imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—*Trial No. 1.*—The conviction is good, the purchase of so small a quantity of potatoes, as only two pice worth, was clearly intended only to serve as the means of passing off the bad rupee.

Trial No. 2.—In this case there is only the evidence of the shop-keeper as to the tender of the counterfeit rupee; but I find no cause to distrust that evidence, as a second witness proves that the prisoners did purchase goods at the shop, and a third, that immediately after, the rupee was brought to him to assay it. I uphold the conviction.

Trial No. 3.—In the two preceding cases, evidence was given to the fact, that the coin passed by the prisoners, was really counterfeit. In this case Bhadoe Dosaud only states, that he had been told by others, that the rupee given to him was bad. It would have rendered the investigation more complete, had the magistrate caused the rupees to be examined by one of the treasury poddars. The rupee passed in the case, however, appears to have been of the same kind as those passed in the two others, and they were declared to be counterfeit by persons quite competent to give an opinion on this point. As in the other cases, so in this, I uphold the convictions; but the sentence, as it stands, is not according to law. Let the labor in irons, be commuted to a fine of rupees one hundred (100) each, payable within fifteen days.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND KEFAYUT PORAMANICK
versus

BANSEE SIRDAR (No. 7 APPELLANT,) JAMEERAH SIRDAR (No. 8 APPELLANT,) JAGEERAH CHOWKEEDAR (No. 9 ACQUITTED,) AND PUHAREEMUNDUL (No. 10 ACQUITTED.)

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, and plundering therefrom property valued at Company's rupees 39-13; 2nd count, accomplices, and aiding and abetting in the commission of the said crime; and 3rd count, having in their possession property acquired by dacoity, knowing it to have been so acquired.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 21st July 1853.

Remarks by the officiating sessions judge.—This was a dacoity which occurred on the 30th April 1853, within the jurisdiction of the Adumdighee thannah, zillah Bograh; Kefayut, the prosecutor, states, that one Monday night in Bysakh, he went to sleep and was awoke by a light; and thinking some house was on fire, he went outside and found some sixteen men with *mus-sals*, who commenced beating him, and wounded him on the head; they went inside, and while they were *looting* the house, he seized the opportunity and ran away. He raised the alarm, and roused the neighbours; and returning with them, he found his house *looted*. He did not recognize any of the men. He saw his property found, and swears to it all.

RUNGPORE.

1853.

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Case of
BANSEE SIR-
DAR and
another.

Prisoners
convicted of
dacoity and
sentenced to
ten years' im-
prisonment by
the sessions
judge.
Appeal re-
jected.

Witnesses Nos. 1 to 4 establish the fact of dacoity occurring.

Witnesses Nos. 5 to 7 witnessed the *sooruthal*.

Witnesses Nos. 1, 4 and 9 witnessed the confession of prisoner No. 7, Bansee Sirdar, before the darogah, which was free and unbiased.

Witnesses Nos. 10 and 12 witnessed the confession of prisoner No. 7, Bansee Sirdar, before the joint-magistrate: it was free and voluntary.

Witnesses Nos. 1, 3 and 4 swear to all the property produced (Nos. 1 to 7) being prosecutor's.

Witnesses Nos. 13 and 14 saw property No. 1 produced from Bansee's house, Nos. 2 and 3 produced by

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Case of
BANSEE SIR-
DAR and
another.

Sokhtah, who said Jameerah (No. 8) had placed them in his house, and Nos. 4 and 5 produced from outside Jameerah's house.

Witness No. 15 saw the above property discovered as before stated, but did not hear Sokhtah say whose Nos. 2 and 3 were.

Witness No. 16, Sokhtah, says that Jameerah is his relation and placed the property in his house during his absence : it is his own.

Witnesses Nos. 17 to 19 prove the finding of property No. 6 in the house of Jageerah (No. 9.)

Witnesses Nos. 20 to 22 prove the finding of property No. 7 in the house of Puharee Mundul (No. 10.)

The prisoners have throughout denied the charge, with the exception of Bunsee Sirdar (No. 7,) who confessed before the darogah, and also before the joint-magistrate, that he and the three other prisoners, (Nos. 8 to 10,) with several others, had committed the dacoity and shared the spoil, of which only 2 annas in pice fell to his lot.

Before the court, they all plead *not guilty*. Prisoner No. 7 denies his confessions both before the darogah and joint-magistrate, and claims the property found ; he says he was ill-used, and produces six witnesses in his favour, but they prove nothing to shake the evidence adduced for the prosecution.

Prisoner No. 8, Jameerah, claims the property found, and says he was at Japhera's house on the night in question. Produces witnesses.

Nos. 23 and 28 say, he was at Japhera's house at supper, but do not know when he left it.

No. 25 swears to the *petarah* by the seam : when asked how leathern *petarah* can be made without a seam, cannot say.

No. 26 cannot swear to the property.

No. 27 swears to the *petarah* ; it is of the same sort he sold to prisoner two years ago.

Prisoner No 9, Jageerah chowkeedar (acquitted,) claims the pillow (No. 6,) and declares he was on his watch the whole night. His witnesses (Nos. 31 to 33) swear to the pillow, which he has had for two years. Witnesses Nos. 33 to 35 swear he was on his watch.

Prisoner No 10, Puharee Mundul (acquitted) claims the cloth (No. 7.) His witnesses, (Nos. 21 and 36) swear to it as his.

The confessions of Bansee Sirdar are most fully established, and the defence of Jameerah is most unsatisfactory ; he proves where he was in the early part of the evening, but there his witnesses stop short. The *petarah* which he attempted to prove his, and to have been his for two years, is almost new, and no

reason is assigned for making it over to Sokhtah's care, so that it appears as if he dreaded the darogah's visit and got rid of the property. I therefore convict both of them.

I tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Ten (10) years' imprisonment each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—After careful consideration of the evidence, I hold the conviction to be good, and confirm the sentence.

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September 12.

Case of
BANSEE SIR-
DAR and
another.

PRESENT :

J. R. COLVIN, Esq., Judge.

GUNGAPERSAUD BHUTACHARJEA AND GO-
VERNMENT

versus

TARA CHAND MOOCHEE CHOWKEEDAR (No. 1)
AND NUTABUR MOOCHEE (No. 2)

24-PERGUN-
NAHS.

1853.

September 13.

Case of
TARA CHAND
MOOCHEE
CHOWKEE-
DAR and
another.

Two pri-
soners convic-
ted of dacoity
and sentenced
to fourteen
years' impri-
sonment. Ap-
peal rejected.

CRIME CHARGED.—Prisoners 1 and 2, 1st count, with dacoity in the house of the prosecutor, on the night of the 7th April 1853, in which property valued at Company's rupees 193-10 was plundered, prisoner No. 1 being at the time a police chowkeedar ; and 2nd count, with having in their possession part of the plundered property, knowing it to have been plundered in the above dacoity.

CRIME ESTABLISHED.—Dacoity, and having in their possession plundered property knowing it to be such.

Committing Officer—Mr. A. Hope, officiating joint-magistrate at Baraset.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 24th June 1853.

Remarks by the officiating additional sessions judge.—A dacoity took place in the house of the prosecutor, Gungapersaud Bhutacharjea, during his absence from home, in which property to the value of rupees 193-10 was plundered. A few days after the occurrence, the darogah appears to have sent for Putee Sirdar, one of the witnesses for the prosecution, and desired him to use his best endeavours to trace the affair ; that he at once proceeded on the mission, disguised as a faqueer, and repaired to the village of Simlia, the resort of a community of the *shikari* tribe ; that he sought and obtained night's shelter at the house of Bushiradin *shikari*, and that while there overheard a conversation between the said Bushiradin and two other persons, who joined him about

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September 13.

Case of
TARA CHAND
MOOCHEE
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DAR and
another.

8 P. M., to the effect that they, including Bushiradin, had received no part of the plunder in the budharmanick affair, while the prisoners had got a goodly portion; and that unless they obtained their share, they would inform against and have them taken up by the police. Putee lost no time in communicating this intelligence to the darogah, and the measures adopted by that functionary led to the arrest of the prisoners. Whether Putee, is altogether as free from participation in a guilty knowledge of this dacoity, as the above recital would make him, is not a question for me to moot. It is sufficient that the information he communicated has answered the purposes of this trial and led to the conviction of the prisoners. The articles pointed out by them on their arrest, with one exception, are proved to be part of the plundered property. They appear to have been secreted under some land freshly ploughed, and their hiding place indicated by the prisoners, who confess the crime both before the police and the joint-magistrate. They plead *not guilty* before this court, but set up no defence, citing witnesses only in proof of good character. These witnesses speak well of the prisoners in general terms, but nothing beyond that.

Sentence passed by the lower court.—Imprisonment in banishment with hard labor in irons for fourteen (14) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The petitioners state nothing in their appeal, but allegations of ill-treatment by the police, totally unsupported by evidence, and refer to the witnesses who spoke generally to their character on the trial. Their confessions to the magistrate, and the discovery of portions of the plundered property upon their indication, are fully proved. I uphold the convictions and sentence.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

CHOONEE ROY MOOSelman.

CRIME CHARGED.—Perjury, in having, on the 27th May 1853, or 15th Jeyt 1260 B. S., intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Deoghur, "that Rughoo Mundul and Anund Mundul, defendants, gave their answers, which were written before the darogah in his presence," and having on the 6th August 1853, or 28rd *Srabun* 1260 B. S., again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of this district, "that the defendants above-mentioned did not give their answers and that they were not written before the darogah in his presence": such statements being contradictory of each other, on a point material to the issue of the case.

BEERBHOOM.

1853.

September 14.

Case of
CHOONEE
ROY MOO-
SELMAN.

Prisoner
convicted of
perjury, in
having made
contradictory
statement, and
sentenced to
three years'
imprisonment.
Appeal re-
jected.

CRIME ESTABLISHED.—Perjury.
Committing Officer—Mr. R. Abercrombie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 23rd August 1853.

Remarks by the sessions judge.—The prisoner was a witness to the mofussil confessions of the prisoners, Rughoo Mundul and Anund Mundul, in the case of culpable homicide, which was tried in this court on the 6th instant.

Before me he asserted and repeated several times, that he was not present when the answers of the two prisoners above-mentioned were taken down and did not know what they contained, and could not attest them. I only cautioned him, and reminded him that false evidence, given under solemn affirmation, was perjury. I even took down in his presence the evidence of three other subscribing witnesses, who all swore that he was there and heard and saw what was going on, and I then gave him another opportunity to correct himself; but on his pertinaciously insisting that he was not present, I sent him to the magistrate for commitment on a charge of perjury.

He now pleads *guilty* and acknowledges the deposition he made before the deputy magistrate of Deoghur, the contradictory statement he made in this court, and his confession before the officiating magistrate of having made a false and contradictory statement.

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September 14.

Case of
CHOONEE
ROY MOOSELMAN.

The jury, with whom I tried this case, found the prisoner guilty of the crime charged, in which verdict I entirely concur; and as he obstinately and deliberately repeated the falsehood, even after he had been reminded of the fact of his having been present by the three other witnesses, I see no cause for any mitigation of punishment. I accordingly sentence him to three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The case is one which certainly called for exemplary punishment, and the Court unhesitatingly confirm the sentence.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

SHEIKH ALEEAH (No. 2) AND SHEIKH ALFOO (No. 3)

MYMENSING.

1853.

September 14.

Case of
SHEIKH
ALEEAH and
another.

CRIME CHARGED.—Prisoner No. 2: Perjury, in having, on the 25th April 1853, deposed under a solemn declaration taken instead of an oath, before the officiating magistrate of zillah Mymensing, that his name was Nujoo; such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.—Prisoner No. 3: Subornation of perjury, in having induced Aleeah to give evidence under the name of Nujoo.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 23rd August 1853.

Remarks by the officiating sessions judge.—Prisoner No. 3 having lost a goat, complained in the magistrate's office against witness No. 3, Sheikh Bhoodhoo, a peadah, and named a person whom he called Nujoo as his witness, to prove that the goat was purchased by him, and prisoner No. 2 attended and deposed before the magistrate by the name of Nujoo. The case was made over for trial to the law officer, and witness No. 3 reported to that officer, that prisoner No. 3 had induced No. 2 to depose under the false name of Nujoo, his name being Aleeah. Upon this, the law officer directed enquiry to be made through the police, and to forward both Nujoo and Aleeah, if there were two persons of those names. The darogah held a local enquiry and forwarded the prisoner Aleeah, (No. 2) as the person who personated Nujoo.

Before the officiating magistrate, the prisoner No. 2 confessed to having deposed in his former deposition, in the

Prisoner convicted of perjury, sentenced, at the recommendation of the judge, to the reduced sentence of one year's imprisonment, the individual who was indicted with him for subornation of perjury having been acquitted for want of evidence.

magistrate's office, under the name of Nujoo, stating that he was induced to do so at the instigation of prisoner No. 3. In this court, he said that although he was asked by prisoner No. 3 to depose by the name of Nujoo, he declined to do so, and that at the time of the mohurir's taking down the deposition, he mentioned his proper name, but that prisoner No. 3 induced the mohurir to write it down as Nujoo, which was accordingly done. The mohurir (witness No. 11) however stated, that the prisoner gave the name of Nujoo, and witness No. 18 (the peadah) deposed that when he called up the witness Nujoo, the prisoner answered to that name.

Prisoner No. 3 denied the charge, urging that he named one Nujoo as his witness, to prove that he purchased the goat, and that the foudjaree peon, who served the subpoena, brought the witness into court; that he did not know the man and was not aware that his name was Aleeah, and that he sold the goat by the name of Nujoo would be proved by his witnesses.

The evidence of witnesses Nos. 4, 5, 6, 7, 8 and 9 is to the effect, that prisoner No. 3 went to their village and requested prisoner No 2 to accompany him to the station, to identify the goat, which he said was taken possession of by witness No. 3, and that when prisoner No. 2 returned to the village, he told the villagers that he had given evidence in the goat case, but did not state under what name.

The only evidence in support of the charge of subornation of perjury against prisoner No. 3 is the statement of the prisoner No. 2, and the presumption arising from the evidence of witnesses Nos. 4 to 9, who all deposed to his having taken prisoner No. 2 to the station to identify the goat; but as that was not, in the absence of more direct proof, sufficient to sustain the charge, I concurred in the *futwa* of acquittal and directed his release.

The charge of perjury having, however, been proved against prisoner No. 2, inasmuch as he personated another person by the name of Nujoo, who was his brother-in-law, and who was in fact the real seller of the goat, but who was absent from home when his evidence was required in the case, I sentenced him to the minimum punishment of three (3) years' with labor and irons; but as my firm belief is that he was induced to personate Nujoo at the instigation of prisoner, from the fact of the real seller of the goat being absent from home, and who has escaped for want of sufficient proof of subornation of perjury, I think a more lenient punishment will suffice, and therefore beg to recommend that the term of imprisonment be reduced from three to one year with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Under all the circumstances of the case, the Court

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1853. accede to the recommendation of the sessions judge, and sentence the prisoner to imprisonment for one (1) year with labor in irons.

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Case of
SHEIKH
ALEEAH and
another.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

KIRTINARAIN SHAHA.

TIPPERAH.

CRIME CHARGED.—Wilful murder of Musst. Tooranga, the daughter of Puddolochun Sahoo.

1853. Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

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Case of
KIRTINA-
RAIN SHAHA.
Prisoner
charged with
wilful murder
acquitted on
the ground of
insanity

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 15th July 1853.

Remarks by the sessions judge.—On the 22nd of February last, the chowkeedar of mouzah Suleah reported to the darogah of thannah Chagulmah, that Kirtinarain Shaha had killed the infant daughter of his brother, Puddolochun, with a *dāo*.

Puddolochun's statement was taken on the following day by the darogah. He deposed that his daughter, who was five years of age, was playing in the verandah of Kirtinarain Shaha's house, with the latter's children, when a quarrel arose between the children, and Kirtinarain Shaha becoming irritated, killed the deponent's daughter with a *dāo*, which he afterwards applied to his own throat, but was restrained by timely interference from injuring himself.

Before the magistrate, Puddolochun's statement was different. He denied having stated that Kirtinarain Shaha had murdered his child under the influence of anger, and declared himself unable to account for the act, adding that Kirtinarain Shaha, when asked what had induced him to commit so cruel a deed, looked upwards and replied that God only knew. He spoke affectionately of his brother and deprecated the idea of entertaining any animosity towards him, or any wish to prosecute him, and mentioned that twenty-five or thirty years ago, Kirtinarain Shaha continued silent for three years, after which he recovered and has since continued well.

Three witnesses gave evidence to hastening to the spot, on hearing outcries issue from the house, and saw the body of the child lying wounded in many places on the ground, and Kirtinarain Shaha before them inflicted another wound with the *dāo*.

The prisoner then attempted to cut his own throat, but was prevented by the witnesses. The child died at the time and on the spot.

The mother is described as giving at the thannah very similar evidence to that of the prosecutor, and as attributing the murder to Kirtinarain's anger at her child quarrelling with his children.

Kirtinarain Shaha is reported to have confessed at the thannah, that while the children were playing in the verandah, in which his *dāo* was lying, he unhappily took it up and killed the child by repeated blows, but why he did so he was unable to recollect.

The prosecutor, I have already remarked, withdrew before the magistrate his alleged statement at the thannah, if indeed he had ever made it, that the child's uncle murdered her in anger.

Kirtinarain Shaha's answer in the magistrate's court was that he had killed the child with the *dāo*. He was asked why he murdered her, whether he had any witnesses to exculpate himself, and whether his confession at the thannah was voluntary. To none of these questions were his answers intelligible, but he is stated to have admitted his signature to the confessions at the thannah.

The witnesses who deposed at the thannah to have found him in the act of murdering the child, and to having seen him strike a final blow with the *dāo*, which he afterwards turned on himself, repeated that evidence before the magistrate. Five witnesses corroborated the prosecutor's statement, that Kirtinarain Shaha had remained silent and heedless of his usual pursuits for a space of three years; but this was many years ago, and he has had no return of that disordered state of mind.

None of the witnesses attempted to explain *why* Kirtinarain Shaha murdered the child, and no allusion whatever was made by them to the asserted quarrel among the children, as the cause of Kirtinarain Shaha's anger.

The absence of all apparent motive for so cruel a deed, and the prisoner's demeanour, seem to have excited a very proper doubt in the magistrate's mind as to his sanity. The medical officer's opinion was first taken by letter. That gentleman reported that, "during the time Kirtinarain Shaha was in hospital, he saw no cause to consider him insane, but that finding some difficulty at times in getting him to reply questions, it would be better he should be confined with other prisoners in the jail, where his movements could be watched."

Subsequently Dr. Williams's formal deposition was taken by the magistrate. On this occasion also the medical officer stated that he saw, during the prisoner's stay in hospital, no

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cause to doubt his sanity, further than that he hesitated to reply to questions put to him. At times his answers were correct; at others they were given with hesitation, and at others again he would not answer at all.

The magistrate seems to have come to the conclusion, that the appearances of insanity were assumed, and committed the case for trial at the sessions.

It accordingly came before me on the 5th April 1852, and I requested the medical officer to attend the trial from its commencement, in order that his examination might be conducted with the care and particularity pointed out as necessary in the case of *Goroo Mundul versus Deenobundhoo Puneegrahee*, heard by the Presidency Court of Nizamut Adawlut, on the 11th January 1851.

The prisoner's appearance in my court rendered his sanity very doubtful. The expression of his countenance was that of restless vacancy. His eyes settled on no object for two moments together, and it was difficult to keep him at all steadily before the bench. He seemed to be searching incessantly for something, that was more in his mind than bodily before him, and to be perfectly unconscious as to what was going on, or what his position really was.

All attempts to induce him to plead failed. As I have before remarked, the civil assistant surgeon was with me during the trial, if such the mere hearing of the proceedings at the thannah and before the magistrate can be termed. In the copy of Dr. Williams's deposition, which accompanies this letter, will be found a question and answer arising from the prisoner's appearance and conduct at this moment. I asked whether the appearance he then presented was that of insanity or of mere artifice. The medical officer, who had heard the record of the case in the magistrate's court and at the thannah read, (and I was careful to explain them literally,) replied, that with reference to the prisoner having suffered in a similar way on a former occasion, and to the absence so far as he could perceive of any motive for committing the murder, he was of opinion that the prisoner's manner arose from insanity. To a previous question, Dr. Williams had answered that he considered him insane, especially with reference to having heard that his mind was before disturbed for a considerable period.

From the prisoner's appearance, and his conduct at the bar, I had myself no doubt whatever that he was then insane and unfit to stand his trial, which I therefore postponed under Circular Order No. 307. I had no suspicion that his standing mute was the result of obstinacy or artifice. His restless wandering glances about the court were not intermitted for a moment, and all questions appeared either unheard or not

understood. Being of opinion that he should be removed to the lunatic asylum for proper treatment, I directed that measure to be taken, observing that should he recover, the trial could be renewed and his sanity or aberration of intellect at the time the murder was committed properly investigated.

The prisoner was accordingly sent to the lunatic asylum at Dacca, where he remained for one year and eighteen days. On the 30th of May last, he was considered as then of sound mind and fit to be set at liberty, and was consequently sent to this district again to stand his trial.

He pleaded *not guilty* to the indictment, with sufficient distinctness to be heard and appeared in rather better health than when standing before at the bar; but his looks and manner were still, in my opinion, far from satisfactory and such as evinced a mind and body both in disordered state.

The evidence, adduced in support of the prosecution, established the fact that the child met her death at the hands of her uncle, (the prisoner,) under the circumstances already mentioned. None of the witnesses deposed that the prisoner was of unsound mind, but it was admitted that some twenty-six or twenty-seven years since, he had continued silent and indifferent to all that passed around him for a period of three years.

I, on this occasion, examined Mr. Skinner, the present civil assistant surgeon, relative to the prisoner's state of mind. Mr. Skinner deposed that he did not consider the prisoner to be at present mad. There was a vacant and wandering look about him, but not such as could be said to amount to insanity. He answered questions promptly, although they occasionally required to be repeated. He appeared, however, to be labouring under softening of the brain, but the disease had not reached the stage of insanity, although he would appear to have laboured under it for a long time. I asked for a description of the effects of that disease upon the mental powers, and Mr. Skinner explained that the intellect becomes, under its influence, weak and lost, the temper peevish and irritable, and in a longer or shorter time total imbecility supervenes. I begged to be informed how one affected for a long time by a disease, the symptoms of which were such as Mr. Skinner had described, could be considered sane. The answer was, that a man whose mental energies are impaired is not necessarily insane, although tending that way.

The prisoner's confession at the thannah set forth that he was walking to and fro in his house, while his twin children were playing outside, and with them their little cousin, the deceased Tooranga. The latter entered the verandah and the

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prisoner, to "his great misfortune," snatched up a *dāo* that happened to be at hand and struck her to the ground. Seeing the neighbours hastening to the spot, he repeated the blows until she expired. Shocked at what he had done, the prisoner now attempted to cut his own throat, but was prevented from effecting his purpose. What induced him to murder his niece he was quite unable to say.

Before the magistrate, he denied having intentionally murdered the child. He stated that he hurled the *dāo* from him in a fit of insanity, and heard afterwards that it had struck his niece.

The prisoner's defence before the sessions court corresponded with that made by him before the magistrate, but included an earnest appeal against the probability of his having knowingly injured his brother's child.

The sole question of difficulty the case presents, is the prisoner's state of mind when the act or crime, as the case may be, was committed; for that it was committed admits of no doubt. On the one hand it is in evidence, that many years ago he so conducted himself, as to render his sanity at the time, at least, questionable. The opinion of the late civil assistant surgeon Dr. Williams, as expressed in his deposition, when the prisoner was before on trial, was in favor of his sanity being then also very doubtful. The present assistant surgeon, Mr. Skinner, while differing from his predecessor on that point, considers the prisoner to be suffering under softening of the brain and thinks it probable that he has been so effected for a considerable length of time. Mr. Skinner too sees him, after he has benefitted by a course of treatment at the Dacca lunatic asylum, where I may fairly presume and remark it is improbable he would have been retained for upwards of a year, unless he, in truth, required the care and management it is peculiarly the province of that establishment to afford. When to these points, I have added as suggestive of reasonable doubts, regarding the prisoner's sane state of mind, the absence of any sufficiently probable cause for the commission of such fatal violence on one, who, young and inoffensive, was also a near relation of the prisoner. I have stated all that the case presents in favor of the opinion that the prisoner acted under the influence of insanity.

For, on the other hand, the witnesses for the prosecution, among whom were some connected by blood and marriage with the prisoner, have deposed that his mind was not disordered, when he committed the murder, nor had been so since twenty-seven or thirty years ago, he had evinced symptoms of derangement. The test of irresponsibility in cases of this description is unconsciousness of the nature of the act done, and

that it is opposed to the law of the land. Tried by it in the present instance, I regret to say, that the result is an absence of direct proof that the prisoner was insane when he murdered the child.

The Mahomedan law officer convicts the prisoner of the murder with which he is charged, and declares him liable to *seasut*.

After much deliberation, I have concurred in this verdict. My doubts, as to the prisoner's responsibility, are certainly not removed, but the case must now go before a higher court, where that point will be finally decided on.

Should the Court be of opinion, that conclusive proof of insanity has not been afforded to justify the prisoner's acquittal on that ground, I would still suggest that sufficient doubts exist on the subject to save him from capital punishment, and that imprisonment for life, with labor suited to his state of health and without irons, would be a safer sentence to pass.

Resolution of the Nizamut Adawlut, No. 1002, dated the 2nd August 1833.—(Present: Mr. J. Dunbar.)—The Court, having perused the papers above recorded, connected with the case of Kirtinarain Shah, observe that it is desirable that the opinion of the medical officer in charge of the lunatic asylum at Dacca, in regard to the sanity of the prisoner, should be ascertained. The sessions judge is accordingly instructed to request the magistrate of that district to take the medical officer's evidence upon oath, and also, if he considers it necessary, to examine one or more of the native subordinates attached to the asylum. The object of the examination should be to ascertain—*first*, whether the prisoner was, or was not insane, on his first admission; *secondly*, if insane how long he continued in that state, and *thirdly*, whether when discharged, he was considered to be of absolutely sound mind, or only so far recovered as to render further detention with a view to medical treatment unnecessary. Should the medical officer consider that the man was unquestionably insane, when first admitted, he should be asked whether he thinks it probable, that the derangement of intellect was of such standing as to carry it back to the date upon which the murder was committed.

As the report of the sessions judge sets forth the case in very clear terms, copies of that report and of the evidence of Messrs. Williams and Skinner, should be sent to Dacca, in order that the magistrate and medical officer may see precisely how the case now stands.

The sessions judge will submit the return from the magistrate of Dacca, with any further remarks which he may desire to offer.

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In reply to the above resolution, the following letter No. 362, dated the 6th September 1853, was submitted by the sessions judge:—

I have the honor to acknowledge the receipt of the Court's Resolution, No. 1002, dated the 22nd ultimo, relative to the proceedings held by me on the trial of Kirtinarain Shaha, charged with the wilful murder of Musst. Tooranga, the daughter of Puddolochun Shaha, reported by my letter, No. 295, dated the 18th of July last.

As instructed by the resolution under acknowledgment, I requested the magistrate of the district of Dacca to take the deposition upon oath, of the medical officer in charge of the lunatic asylum at Dacca on certain points indicated by the presiding judge.

I have now the honor to submit, in original, the examination in question, and as the Court's resolution permits me to add any remarks which I may desire to offer, I would beg leave to recommend that the prisoner should be acquitted under Act IV, of 1849, instead of being convicted, in accordance with the Mahomedan law officer's *futwa* and my previously expressed concurrence therein.

The medical officer, in his reply to the first question put to him, states, that the prisoner, when first admitted into the Dacca lunatic asylum, was noted down as foolish and dementate, and adds, that his opinion at the time was that the prisoner was of unsound mind. In his answer to the last question, the medical officer deposes, that he thinks it very probable that the condition of mind, exhibited by the prisoner, when first brought under notice at the insane asylum, had a duration quite as long back as the date of the murder.

Coupling this opinion with the general character of the case, which is that of an objectless and causeless murder of a young and inoffensive child, to whom the prisoner was closely related, I am of opinion that he was of unsound mind and is entitled to an acquittal.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The impression upon my mind, before recording the resolution, to which the letter of the sessions judge of the 6th instant is a reply, founded upon the general tenor of the evidence, was that the prisoner was not of sound mind when he committed the murder. The evidence of Dr. Green, now forwarded, has of course confirmed that impression. The reasonable presumption arising upon the evidence is, that the prisoner was not conscious that he was doing an act opposed to the law of the land when he killed the child. He cannot therefore be held responsible for the act, and the Court accordingly acquit him.

The sessions judge will follow the course prescribed in Act IV. of 1849, providing for the safe custody of the prisoner, until the orders of Government for disposing of him are received.

PRESENT :
J. DUNBAR, Esq., Judge.

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HAJEE GOLAM ALEE AND GOVERNMENT
versus

AMJAD MAJEE (No. 1,) AND KULLEEMUDDEE (No. 2.)

CRIME CHARGED.—1st count, Nos. 1 and 2, with theft, by the administering of intoxicating drugs, of property valued at Company's rupees 101-11, belonging to the prosecutor and his family; 2nd count, No. 1 with knowingly receiving and having in his possession property valued at Company's rupees 101-6, numbered 1 to 57, obtained by the above theft; No. 2 knowingly receiving and having in his possession property, Nos. 58 to 62, valued at 5 annas, obtained by ditto.

Committing Officer—Mr. F. B. Simson, officiating joint magistrate of Noakhali.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 16th August 1853.

Remarks by the sessions judge.—The prosecutor left Lahore, his native country, some years ago on pilgrimage to Mecca and other holy places. He recently arrived at Soodharam, on his way to the *durgah* of the Sultan Bajid Bostan in Chittagong, accompanied by his two sons and the wife of the elder, all of tender age. On the road from Soodharam to Chittagong, he made the acquaintance of the prisoners, at an entertainment given by the son of Tahid Chowdry, when they inquired and he told them the object of his journey. Falling in with them again, a day or two afterwards, they expressed a wish to join him, which he prudently discouraged, but they rendered themselves agreeable to the children, and the result was that the party, now six in number, reached the house of one Khulill Mahomed, on the 10th of March. After supper, of which they partook in company, the prosecutor mentioned that he and the children were suffering from a cutaneous disorder, which the prisoner Amjad undertook to cure by a single dose of a specific in his possession. Accordingly, at a later hour, he administered about two *tolahs* weight of some sweet substance, which the prisoner Kulleemuddee took out of his bundle for the purpose, to the prosecutor, and smaller quantities to the two elder children, having first apparently put a very little

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JEE and another.

Two pri-
soners con-
victed of theft,
by adminis-
tering intox-
icating drugs,
sentenced to
fourteen years'
imprisonment
in banish-
ment.

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ther.

into his own mouth. The youngest child was fortunately asleep, and the prosecutor, as fortunately, objected to his being awakened, for in the case of one so young, the result would probably have been fatal. In a short time, apparently less than half an hour, after swallowing the drug, the prosecutor and the two children became perfectly insensible, in which state they continued until noon of the next day. When the prosecutor had partially recovered his senses, he found that he had been robbed of all his property, which consisted of a variety of clothing, ornaments, &c., valued in the aggregate at Company's rupees 101-11. His first impression was, that the owner of the house had something to do with the condition into which he had been thrown, but this was strongly denied and the act attributed to the prisoners. The prosecutor left the house and went on to that of one Wullee Booeah, where his complaints and lamentations attracted a crowd about him, among whom happened to be two hearers, who suggested that he should describe the appearance of the parties he suspected. This he did, and they immediately recognized and named the prisoners, who, they observed, were in the habit of committing such outrages. The prosecutor wrote down the names and laid an information at the thannah, the result of which was the apprehension of the prisoners and the recovery of every article of the stolen property. They admitted that they had rendered the prosecutor and the children insensible by giving them *dhaturah* mixed with sugar, and had then effected the robbery, which they had in view from the first.

It will be observed that the prosecutor, in his statement at the thannah, described the sweet substance given to him as *shirnee*, instead of as medicine for the itch. He explained this discrepancy probably enough, by observing, that he was still laboring under the stupifying and confusing effects of the drug, when he proceeded to the thannah. In reply to a further question, as to the quantity the prisoner Amjad had himself taken, the prosecutor replied, that he put his fingers into his mouth, but whether with or without any of the substance on them, he, (the prosecutor,) could not say. There can be little doubt, I think, that the prisoner feigned to eat, but in reality took none of the drug.

The prisoners pleaded *not guilty*.

There were, as might be expected, under the circumstances, no witnesses to the fact, but the following circumstantial evidence was afforded in support of the prosecution.

Mahomed Korye, brother of Khulill Putwaree, and residing in the same house, that in which the drug was administered and the robbery effected, deposed to the arrival of the prosecutor and the children in company with the prisoners, who

wore the dress of religious mendicants. He stated that the travellers put up at his house for the night, and that about 2 o'clock in the morning, he was aroused from his sleep by a noise in the room in which they had taken up their quarters. Entering, he found the prosecutor in a state of apparent derangement, at one moment laughing, and at another crying, but utterly incapacitated from explaining what had happened to him until the afternoon of that day, when he stated that he had been rendered insensible by some drug administered by the prisoners who had subsequently robbed him of all he possessed. The witness proceeded to mention the apprehension of the prisoners, in consequence of the clue afforded by the prosecutor's descriptions of their persons. I have omitted to observe that the witness remarked their absence when he entered the room on the night of the occurrence.

A second witness, Amjad Meer, deposed to a very similar effect, with this difference, that not sleeping in Khulill Putwaree's house, he did not see the prosecutor and the children in the course of the night. He visited them, however, on the following day, and found them still laboring under the effects of the narcotic they had swallowed the previous evening.

A third witness, Asgur, gave evidence to the state of temporary derangement in which the prosecutor and two of the three children were found at 2 o'clock in the morning, and in which they continued during a considerable part of that day. He had been summoned to the house, being a near neighbour, by a servant of Khulill Putwaree, when the prosecutor's state was first discovered.

The recovering of the prosecutor's property, in the possession of the prisoners, and its identification, as belonging to him, were duly proved.

The prisoners made ample confessions at the thannah and before the magistrate, in which they admitted having attached themselves to the prosecutor with the object of despoiling him of his property, when an opportunity should offer of administering to him *dhaturah* mixed with sugar. This presented itself at Khulill Putwaree's house, when the prisoner complained of the itch, and thus furnished them with a pretext for recommending a medicine in their possession. They then administered the prepared *dhaturah* to the prosecutor and to two of the elder children, and when it had taken effect, threw what remained of the drug into the fire and decamped with the property, which was shortly after found in their possession.

They did not, however, abide by these confessions, when on trial before me. The prisoner Amjad stated that the moonshee of the joint magistrate's court, who recorded his confession,

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was on bad terms with him, and that he was not in the possession of his right senses when he made that confession ; and that his confession had been extorted by violence at the thannah. I observe that not the slightest grounds exist for crediting either plea. The prisoner added that his witnesses would depose to his being a well liver, and one not in the habit of offending against the laws.

The prisoner Kulleemuddee stated, that his confession at the thannah had been extorted by ill-treatment, and had been made before the joint-magistrate while he was not in his sound mind. He declined having any witnesses examined in support of this defence.

The single witness examined on behalf of the prisoner Amjad, (for he would have but one examined,) deposed to no point at all affecting his guilt or innocence in the present instance.

The Mahomedan law officer convicted the prisoners on the 1st count of the indictment, and pronounced them to have incurred *akoobut*.

In this finding I concurred, being of opinion that their guilt had been fully established by their own confessions, at the thannah and before the magistrate and by the evidence of the witnesses for the prosecution.

I held and referred to the Sudder Court a very similar * trial, to that now under report, on the occasion of the last sessions of jail delivery at this station. I then described the offence of administering intoxicating drugs, with a view to robbery, as a novelty in crime in this part of the country, and such, I am informed, it really is in spite of a second occurrence of the kind following so rapidly on a first ; for so far as I can learn, no trial of the description ever took place in the zillah court before that held in December last. The crime being a very serious one, I would recommend that the sentence passed should be severe in proportion, as affording the best prospect of putting a stop to a species of outrage peculiarly dangerous, on so great a thoroughfare as the high road to Chittagong. The sentence, I would suggest, is fourteen (14) years' imprisonment, in banishment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The guilt of the prisoners is clearly and fully established. The case referred to in the last paragraph of the sessions judge's letter came before me ; the general circumstances of that now under consideration are precisely of a similar character. The sentence of the Court is that the prisoners be imprisoned for fourteen (14) years in banishment with labor in irons.

* Mahomed Khosal Majee, Mohussun Alee, Mohobut Alee and Ahmud Alee.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND SUMBOO CHUNDER BANERJEA

versus

GOBURDHUN GHOSE (No. 1,) LALCHAND SUNTRA (No. 2,) TOPSEERAM BAGDEE (No. 3 APPELLANT,) SONAOOLLAH SHEIKH (No. 5) AND KHEMA BAGDENE (No. 6).

CRIME CHARGED.—1st count, dacoity and plunder of property, value rupees 119-6, belonging to the prosecutor, against prisoners Nos. 1, 2, 3 and 5; 2nd count, accessory after the fact against the prisoner No. 6, and 3rd count, having in their possession part of the plundered property belonging to the prosecutor, knowing it to have been acquired by dacoity against prisoners Nos. 1, 2, 3, 5 and 6.

24-PERGUNNAHS.

1853.

September 15.

Case of
TOPSEERAM
BAGDEE and
others.

Prisoner convicted of having property acquired by dacoity in his possession and sentenced to five years' imprisonment. Appeal rejected.

CRIME ESTABLISHED.—Being accomplices in dacoity against Nos. 1 and 2; knowingly receiving plundered property acquired by dacoity against Nos. 3, 5 and 6.

Committing Officer—Mr. E. Jenkins, magistrate of Howrah.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 13th June 1853.

Remarks by the sessions judge.—It appeared from the statement of the prosecutor, that on the morning of the 30th Phagun last, when he was absent from home, he heard of a dacoity having occurred at his house the previous night; he immediately proceeded home, and on his arrival, the fact of the dacoity was confirmed by his wife and by his observing his boxes and trunks broken open and property plundered, consisting of gold and silver ornaments, brass utensils and clothes, valued at about rupees 119. Before this court the prisoners denied the charges on which they were arraigned. In the mofussil and before the magistrate, prisoner No. 1 and prisoner No. 2, Goburdhun Ghose and Lalchand Suntra, admitted their being accomplices in the dacoity; in the mofussil, prisoner No. 6, Khem Bagdenee, admitted her privy to the dacoity before its occurrence, and her absconding with property when arrested. The prisoner No. 1 was met quite accidentally on the morning after the dacoity by witness No. 1, Sreemunto Chowkeedar, at a neighbouring village, who noticed some blood on his leg and apprehended him on suspicion. The prisoner confessed to the dacoity and three articles of property were found on his person, which proved to have belonged to the prosecutor. From this prisoner's confession, prisoner No. 2, and subsequently the other prisoners were seized by witnesses Nos. 2, 3 and 4, Ubbearam Chowkeedar, Nobin Roy Burkundawz, and Rambux Misser,

1853.

September 15.

Case of
TOPSEERAM
BAGDEE AND
others.

jemadar. Prisoner No. 4, Nobin Mullick Bagdee, surrendered himself to the police. Witnesses (neighbours of the prosecutor) corroborated the fact of the dacoity; others deposed to the recovery of property from prisoner No. 1, Goburdhun Ghose, alluded to before, as well as prisoners Nos. 2, 3, 5 and 6, Lalchand Suntra, Topseeram Bagdee, Sonaollah Sheikh, and Khema Bagdenee, which was identified as belonging to the prosecutor. Prisoner No. 1, Goburdhun Ghose, pleaded an *alibi* and cited witness to prove it. Prisoner No. 2, Lalchand Suntra, pleaded to the same purport. Prisoner No. 3, Topseeram Bagdee, claimed the property found in his possession as his own and belonging to his family, and cited witnesses. Prisoner No. 5, Sonaollah Sheikh, claimed the property found in his house and cited witnesses to support his claim. Prisoner No. 6, Khema Bagdenee, had nothing particular to urge. The only witnesses who at all supported the pleas for the defence were Nos. 36, 37 and 38, Gopal Roy, Benoo Mullick and Sreemunto Durwan, for Prisoner No. 3, Topseeram Bagdee, but these persons were not named at first by the prisoners when asked by the magistrate; they were subsequently thought of, and their evidence was not considered sufficient to impugn the weight of testimony elicited for the prosecution. I convicted prisoners Nos. 1 and 2, Goburdhun Ghose and Lalchand Suntra, of being accomplices in dacoity, and prisoners Nos. 3, 5 and 6, Topseeram Bagdee, Sonaollah Sheikh and Kheema Bagdenee, upon the third count, and sentenced them to imprisonment.

Sentence passed by the lower court.—Nos. 1 and 2, each to seven (7) years' imprisonment; Nos. 3 and 5, each to five (5) years, all with labor and irons; and No. 6, two (2) years' imprisonment, without irons, but labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner has urged nothing in his appeal, but a denial of any knowledge of the dacoity. I concur with the sessions judge in convicting him of having part of the stolen property in his possession, and confirm the sentence passed upon him.

PRESENT:

J. R. COLVIN, Esq., Judge.

GOVERNMENT AND MUSST. LUKHEEA
versus

LEDHOO (No. 1) AND GUNGOOA (No. 2.)

CRIME CHARGED.—Prisoner No. 1, wilful murder of Gayana, son of prosecutrix, and prisoner No. 2, accessory to the crime after the fact.

Committing Officer—Captain W. H. Oakes, principal assistant to governor general's Agent at Lohardugga.

Tried before Major J. Hannyneton, deputy commissioner of Chota Nagpore, on the 13th August 1853.

Remarks by the deputy commissioner.—The prosecutrix states, that her brother told her that her son had been murdered by the prisoner Gungooa, and that the body had been concealed. Prosecutrix had not any conversation with a female named Gungcea, but, mentioned her name at the instigation of Bhookla Digwar. The deceased had for three years improper intimacy with Dookhnee since her marriage. The prisoners had often beaten and warned him about it. His own wife left him recently, because Dookhnee had said to her (tauntingly) you are a beauty. Every one knew of this intimacy.

The prisoners both plead guilty.

No. 4, witness Nawhoa, states, that one Tuesday forenoon, in the month of *Sawun*, he was going towards Sosai village, and saw Magha and Heera burying the body of Gayana in the Kael River. He reproved them for it, and they answered that already three days had passed, and no evidence had appeared; so that nothing else could be done. Witness recognized the body and was present at the inquest. The body was decomposed, but had marks of violence on it. The skull was broken. The deceased, for four years past had improper intimacy with Dookhnee, but she was then unmarried. Among the Coles, impure intimacy prior to marriage is customary. Before the body of the deceased was found, his mother and Rama and Heera had been seeking him. Heera and Magha found it first.

No. 5, witness Jheerga, proves nothing material.

No. 6, witness Sonoa, states, that one morning he found the body of Gayana lying in the Kael River; there were on it marks of severe wounds. Witness had not then heard that Gayana was missing. Did not mention the discovery to any one.

No. 7, witness Burgeea, proves the record of the inquest.

No. 8, witness Jeeto, No. 9, Ruttoo, No. 10, witness Mukhun

HAZAREE-
BAUGH.

1853.

September 16.

Case of
LEDHOO and
another.One pri-
soner con-
victed of wil-
ful murder
and another
as necessary
after the fact.

The plea of the principal offender, of provocation in finding the deceased in adultery with his wife, not held sufficient under the circumstances for more than a slight mitigation of punishment.

1853.

September 16.

Case of
LEDHOO and
another.

and No. 11, Juddoo, prove the confessions of the prisoners before the darogah.

The confession of the prisoner Ledhoo is to the effect, that he has been married to Dookhnee for six years ; that Gayana and she have been intimate, and that for four years past, prisoner had frequently, but in vain, warned Gayana to desist. Wherefore on a Saturday, or Sunday night, prisoner came from his house at Boondoo to Burkohra village, where he saw that his wife and Gayana* were dancing and amusing themselves in the village assembly-room. When the dance was over about midnight, Gayana and the prisoner's wife went together towards a grove, and prisoner who had climbed up a fig-tree and was watching, descended from the tree, and following discovered them in the act of adultery, whereat prisoner being enraged, struck Gayana several blows with an iron-bound stick. Gayana then got up and a personal struggle ensued between him and prisoner, during which the woman ran off, and finally Gayana attempted to escape, but from the effect of the heavy blows he had received, he fell and died. Prisoner then called his brother-in-law, the prisoner Gungoona, and with his aid threw the body into the river. Prisoner then came home and told his parents only. When questioned by the darogah, he at first denied, but willingly confesses now, because his wife and mother-in-law have disclosed the facts.

The confession of the prisoner Gungoona is to the effect, that he aided in concealing the body of Gayana immediately after the murder.

No. 12, witness Sheikh Mahomed Tukkee, No. 13, Sheikh Boodhoo, No. 14, Bhoola Khan, prove the confessions of the prisoners before the principal assistant.

The confession of the prisoner Ledhoo, before the principal assistant, is in the following terms :—

" I have killed Gayana with this iron-bound club. Gayana was intimate with my wife Dookhnee and used to take her away forcibly. For four years I have warned him not to do so, but he took no heed. Ten or twelve days ago, at midnight, he took my wife to a grove. I caught him in the act and killed him. Gayana brought my wife to Burkohra village, where her parents dwelt ; there, all the Coles of the village, and my wife among them, were dancing in the assembly-room†. When the dance was over, all went home. My wife also was going home, when Gayana came, whence I know not and took her away. I having eaten my supper at home, came to Burkohra, and climbed

* This differs from his subsequent confession before the principal assistant.

† Literally 'dance court' (*jhumarakhara*). The Coles are very fond of dancing, and assemblies, such as the prisoner mentions, are frequent in every village.

up a fig-tree, and while sitting there, saw my wife going to the dance. Also, when she came out, I saw Gayana take her by the hand. Then I came down from the tree and followed them. I was close by when the act was being committed, and I called three times who are you, who are you, but got no answer, so I struck him with a club, one blow on the head and five blows on the body. He got up and wrestled with me, and my wife then fled. I intended to kill her also. While struggling with Gayana, I seized him by the hair of the head with one hand and by the neck with the other: gave him a kick on the testicles and then let him go, and bade him go home. I went to pick up my cloth, which had fallen, and he ran off to the northward. I pursued; he ran about 300 paces, and then fell in the water of a rice-field and immediately died. I touched him and felt that he was dead. So I went and called my brother-in-law Gungooa, and told him that I had committed a great crime in having killed Gayana, who died not at the place, where he was beaten, but in another place. I explained the whole to Gungooa and begged him to help me to conceal the body in the Kael River. We took a straw rope and long pole, with which we carried the body and threw it into deep water. Each then went to his home, and we kept the matter secret. I got up the fig-tree to watch, intending to kill Gayana for his misbehaviour with my wife. I did not stop them when I saw them at first, because I *would* kill him. For four years he disregarded my prohibition, therefore I *would* kill him. I called out, who are you, who are you, because I did not know whether it was Gayana or another, who took away the woman. It was moonlight, but in the shade of the grove, dark. I told my father what I had done. Now I confess freely."

The confession of the prisoner Gungooa is to the same effect as his previous confession.

No. 15, witness Bhoja, was told by his sister Lukheea, of his nephew's murder, and gave information to the police. The prisoner Gungooa, is Dookhnee's brother. She is also called Lullea.

No. 16, witness Musst. Beijne, was told by Gungooa of the murder of Gayana by Ledhoo, and how it happened. Gayana had been intimate with Dookhnee for four years, and Gayana had often been put in charge of his mother on this account. Dookhnee used to complain of his using force. No restraint is imposed on young people (*dinda dindi*) prior to marriage. Dookhnee went from witness's house to the dance on the evening of the murder. She did not return till noon, the next day; she had been three days with witness.

No. 17, witness Deebra, one day saw the body of Gayana's sister's husband Hurwa.

1853.

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Case of
LEDHOO and
another.

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Case of
LEDHOO and
another.

No. 18, witness Lukhun, heard Hurwa and others confess to the darogah, that they had buried the body of Gayana.

No. 19, witness Pundroo, was told that Gayana's body had been found, and went and saw marks of violence on it. Hurwa and others buried it. Hurwa is Gayana's sister's husband.

The prisoner Ledhoo, in his defence, repeats without material variation the substance of his confession before the principal assistant.

The prisoner Gungooa, in his defence, repeats his confession.

The jury, whose names and occupations are entered below, find the prisoners *guilty* as charged.

In this verdict I concur. The only point for consideration is, whether the prisoner Ledhoo's justification be admissible. I think it is not. The prisoner's confession shows clearly that he went and lay in wait, with a deliberate intention to kill the deceased. That the prisoner had cause for jealousy cannot be doubted, and that he killed the deceased in the act of adultery is credible, though this fact rests on the confession of the prisoner only. The woman Dookhnee has not been examined in court. The evidence of the prosecutrix Lukheea, before this court, differs in an important respect from her first statement, made on oath before the principal assistant. She then stated that one Gungeea had told her, that the deceased was led into a snare by Dookhnee with design to murder him. From this evidence, no safe inference can be drawn, but it tallies remarkably with the admitted design of the prisoner. I have on former occasions expressed my unwillingness to allow that the killing, by a husband, of a man suddenly found in the act of adultery with his wife, is completely justifiable. I cannot grant that the law may put a sword into any man's hand, except to save his own life. The case before me shows, at least, the possibility of a man and his wife conspiring to compass the death of another, and to justify themselves by their own sin. Here there was opportunity to have prevented the adultery, but the prisoner says that he did not prevent it, because he had resolved to murder the deceased; yet with some inconsistency he declares that he did not know who was with his wife. + The only thing that I see to indicate that murder was not intended, is the very remarkable expression of the prisoner, that he gave deceased a kick and bade him go home, while prisoner went to pick up his cloth, which had dropped. Under all the circumstances of the case,

* Ukhory Enjory Lal, mookhtar.—Lala Gujraj Singh, ditto.

+ His statements on this point are conflicting, as noticed above.

I would recommend that the prisoner Ledhoo be sentenced to imprisonment for five (5) years, with hard labor in irons, and that the prisoner Gungooa, whose crime is no way altered by the manner of the murder, be sentenced to two (2) years' imprisonment, with a fine of rupees fifty (50) in lieu of labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin.)—The case occurred in the Chota Nagpore territory, and is therefore to be decided without reference to the provisions of the Mahomedan law.

There is no ground on the evidence, for believing that the prisoner laid any plan to entice the deceased to the meeting with his (the prisoner's) wife; but he certainly acted with deliberation, and cannot, the intercourse being known to him to have subsisted for sometime previously, have the indulgence which might justly be extended in a case of extreme provocation, suddenly created.

On the other hand, the provocation was increased by the circumstance that the prisoner had before spoken to the deceased, and warned him to desist from his illicit intercourse with Musst. Dookhnee.

I concur in the conviction of both the prisoners, and under all the circumstances confirm the sentences proposed by the deputy commissioner, remitting however the irons in the sentence on the prisoner No. 1, Ledhoo.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT

versus

RAMDHUN CHUNG (No. 26) AND BHUNDOOLA
CHUNG (No. 27.)

CRIME CHARGED.—1st count, wilful murder of Prandhun Chung; 2nd count, being accomplices in the above charge, and 3rd count, privity.

Committing Officer—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 22nd August 1853.

Remarks by the sessions judge.—The *futwa* convicting the prisoner of privity to murder and being an accessory after the fact, the reference is unavoidable.

Two prisoners were originally committed on the charge, but one (No. 26) died before the trial came on.

1853.

September 16.

Case of
LEDHOO and
another.

RAJSHAHYE.

1853.

September 16.

Case of
BHUNDOOLA
CHUNG.

Prisoner
convicted of
privity to
murder and
sentenced to
seven years'
imprisonment.

1853.

September 16.

Case of
BHUNDoola
CHUNG.

After waiting upwards of one hour for the Government pleader, the deceased's mother was examined as prosecutrix.

According to her account, her son, though only sixteen, had an intrigue with the wives of both of the prisoners, themselves very young women, though perhaps older than the deceased by two years.

She deposed that on the day stated, when about one *puhur* remained, her son went out to tether their cattle grazing in the *maidan*, and was followed by No. 26. That on her son not returning, she went to No. 26 to learn what had become of him, when the prisoner said he had come to Runhar *diggee* (a tank so called), and what became of him after, he did not know. Six days after, the mother of No. 26 told her that the prisoners had killed her son and had placed his body in the *diggee* or tank above-named, and next day, she (prosecutrix) with Tamee Aurut, (witness No. 16,) discovered the body in the tank, which she identified as that of her son from a *bazoo* on the right arm and his long hair. She added, that she suspected both the prisoners of murdering her son on account of the adulterous intercourse he had with their wives.

The prisoners pleaded *not guilty*.

Witness No. 21, deposed to seeing the deceased going in the direction of the tank, and a little while after No. 26 followed him. No. 27 was not there (*i. e.*, with No. 26).

Witness No. 16, deposed, that she was present with the deceased's mother, when the body was discovered, who recognizing it as that of her son, began to cry.

The next witness, and a very important one, No. 18, deposed to going to the tank to fetch water from it, when she saw the prisoner and No. 26 (deceased) bring a body, which they concealed under the *dam* or weeds on the North side of the tank. She could not say whose corpse it was. She mentioned this first to the darogah.

The next witness, wife or widow of No. 26, detailed a conversation held with her husband relating to the murder of the deceased, and who she accused of having an intrigue with the wife of No. 27, and who wanted to intrigue with her.

Of four witnesses to the *sooruthal*, (and who were present when the body was taken up from the tank,) three identified the corpse as that of Prandhun, the prosecutrix's son. None of them could say if a bamboo had been thrust up the *anus*. The water of the tank the villagers used for drinking, and dead bodies were never thrown into it.

The prisoner confessed both before the darogah and the officiating magistrate, and admitted seeing No. 26 kill the deceased, who threatened him (the prisoner) if he said any thing : that in consequence he told no one.

In the mofussil confession, the prisoner admitted pointing out the place where the body was discovered, and in the foudaree in confession stated the deceased's mother was his wife's sister, how could she therefore have an intrigue with him ? Both these confessions were proved to have been voluntarily made by the prisoner, and the prisoner put no questions to the witnesses.

The prosecutrix was then examined as to her relationship with the prisoner's wife, who was confronted with her, but declared they were not related in any way. The prisoner's wife also denied any relationship.

The prisoner's defence was, that he was working as a *cooly* at Goluck Kamar's house on the day of the alleged murder ; and two of his witnesses confirmed his statement.

If the evidence of witness No. 18, Roopa Aurut, is to be credited, and I see no reason why it should not, I think her testimony, coupled with the confessions made by the prisoner fully establish his being present when the deceased was murdered, and that he raised no voice to save him ; and as the fact of the intrigue between his wife and the deceased was notorious, it may be safely presumed he was a consenting party to the latter's murder, and voluntarily assisted in concealing the body after.

I therefore beg to suggest, that under the *futwa* (one of *akoobut*) he be convicted of being privy to the murder of Prandhun Chung and an accessory after the fact, and sentenced to imprisonment in transportation for life.

With this opinion, I beg to leave the prisoner's case in the hands of the Court : he is in jail.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The prisoner, No. 27, confessed in the mofussil, and before the magistrate, that he saw the prisoner, No. 26, (deceased) kill by strangulation, Prandhun, the deceased. He remained silent on the subject through fear of No. 26. Roopa Aurut, a witness, deposes she saw the two prisoners in the act of concealing the corpse under some weeds in a tank.

The prisoner by his own confessions, witnessed the murder from a distance, and he concealed it. He is convicted of being privy to the deed and sentenced to seven (7) years' imprisonment with irons and labor.

1853.

September 16.
Case of
BHUNDoola
CHUNG.

PRESENT :
SIR R. BARLOW, BART., Judge.

GOVERNMENT

versus

MUSST. KHUTTEAH.

SHAHABAD.

1853.

September 16.

Case of
MUSST.

KHUTTEAH.

Prisoner
 convicted of
 murdering her
 child, by
 throwing her-
 self and the
 child into a
 well, sentenced
 to imprison-
 ment for life.

CRIME CHARGED.—Wilful murder of Musst. Ukhjee, her own child.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 19th August 1853.

Remarks by the sessions judge.—The prisoner is convicted, on her own confessions, repeated before the court, and corroborated by the circumstantial evidence of having thrown herself, with her little child, an infant of one year old, into a deep well full of water.

The child was drowned, but the woman was rescued, being taken out of the well by Sewpersaud Roy and Sheroburj Aheea.

The guilt of the unfortunate woman is clear. Her only exculpation is, that the deed was done under the influence of disappointment and distress; the man with whom she lived having refused to allow her maintenance for herself and his child.

The *futwa* convicts the prisoner of wilful murder, but declares *kissas* barred on account of the relationship between her and the deceased.

A second *futwa* declares that law for this impediment *kissas* would be irrelevant.

I cannot recommend a capital sentence in this case, although the illegal act committed by the prisoner was, in all human probability, sure to result in the death of the helpless infant, and the murderer may therefore be considered a deliberate act, and although the attempt at suicide rather aggravates than lessens the criminality, it is yet impossible not to feel that the bitter agony which led to the perpetration of the desperate act, diverts it of that dark and malicious character which calls for the extreme penalty of the law.

I accordingly recommend that the prisoner be sentenced to imprisonment for life with labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—I confirm the proposed sentence.

PRESENT:

J. DUNBAR, Esq., *Judge,*

AND

H. T. BAIKES, Esq., *Officiating Judge.* *

GOVERNMENT

*versus*ROOPA BURRAI (No. 1) AND BOODHUN BURRAI
(No. 2.)

CRIME CHARGED.—Wilful murder of Musst. Chumalea.
Committing Officer—Mr. F. C. Fowle, magistrate of Behar.
 Tried before Mr. T. Sandys, sessions judge of Behar, on the
 20th July 1853.

Remarks by the sessions judge.—On 4th May last, Khedun Gorait of Jelalpore (witness No. 17,) one mile distant from chowkee Teekaree, informed Mahomed Bun, the jemadar stationed there, that the villagers, on taking out their cattle to graze that day, had discovered the body of a young unknown Hindoo woman, showing several sword wounds and having both the thighs cut off. That on proceeding to the spot, he found this to be the case, and the body so far decomposed, that death must have taken place some two or three days previous. This report was further confirmed by the jemadar's inquest, No. 2, of 4th May, corroborated by its attesting witnesses, Nos. 2 to 5, and Dr. Diaper's *post mortem* examination, which found both legs, which had been cut off at the hip-joints, and the right hand cut off at the wrist joints, missing. Three large incised wounds on right fore-arm on its palmar aspect, each dividing an artery sufficient to cause death. Also an oblique deep gash on the left side of the head and face, sufficient also of itself to cause death. As both legs were cut off very smoothly, was of opinion that the deceased must have died from the wounds on the right fore-arm or left temple, and that her legs were cut off after her struggles had ceased.

The recognition of the body soon followed the inquest. The *jemadar*, in his report No. 11, 5th May, takes the credit to himself, but the discovery evidently opened with Dursun's, (witness No. 16,) evidence before him on the 4th. No. 12 also, (*vide* his evidence No. 19, 6th idem,) in which some recognition having taken place, he at once named the prisoner Boodhun, as having brought home a concubine, whom he had heard was not in the house, and concluded by stating that he *would* proceed to the prisoner's quarter in search of further information. This witness, though chowkeedar of Jelalpore, resides in the same division of Teekaree as the prisoner, *viz.*, Raneegunge; but the deceased was personally unknown to him. By his supplementary

BEHAR.

1853.

September 16.

Case of
ROOPA BUR-
RAI and
another.

Two pri-
soners con-
victed of aid-
ing and
abetting in
wilful murder,
sentenced to
transportation
for life.

1853.

September 16.

Case of
ROOPA RUB-
RAI and
another.

evidence of the following day, the 5th, he had caused the recognition of the body through Musst. Luchmuneea (witness No. 1,) Musst. Soomeria Dhobin (witness No. 13,) who had washed the deceased's clothes during her residence at Teckaree ; Nankoo Gwala, (witness No. 14,) prisoner's next-door neighbour ; and Sohraiee witness No. 15. On the jemadar's reaching Raneegunge, neither of the two prisoners was to be found, and the deceased was said to have gone to Low, where Nankoo Burkundauze proceeded on a fruitless search. The jemadar, having obtained some trace of Boodhun, went to Buchainpore during the night of the 4th, and apprehended him there, in his relative's (Raywat Lal's) house (*vide* Raywat Lal's evidence No. 26.) Returning with Boodhun to Raneegunge on the 5th, his father, the prisoner Roopa was then forthcoming. Both acknowledged Musst. Chumaleea had been living* in their house as Boodhun's concubine. Indeed Boodhun had brought the deceased into his house as a widow with two children, who were found in the house, and the deposition of the eldest, *Chumaree*, said to be eight or nine years of age, was taken by the police No. 24, on the 4th May.

Roopa at once confessed, in presence of the witnesses Nos. 7, 8 and 9, that four days previously, Monday night (the 5th being Thursday) ; that his son, Boodhun, awoke him at midnight and took him into the room, where he found the deceased lying dead on the ground with two wounds, one on her breast, near the neck, and the other on her head, when he cut off her thighs with a knife and kept the corpse in the same room, the whole of the next day, Tuesday, and during Tuesday night. Boodhun and himself carried out the mutilated body in a basket and threw it away, where found in the Jelalpore grounds, the next morning, and afterwards the thighs in another direction towards Cheryela. † That Boodhun had stripped the deceased of her jewels, and he could not produce them. He did not know why Boodhun had murdered the deceased, and accounted for his having cut off the thighs on his son's telling that he had committed the murder unadvisedly. He acknowledged that two of his fingers had got cut during the operation—"zukhnee kurne men," as from their trivial nature and the severity of the deceased's mortal wounds seems most probable.

With this confession, an immediate search of the house took place in the presence of the same witnesses (Nos. 7, 8 and 9) and the two prisoners, who in no way aided it, as corroborated by the

* Some three or four months.

† On search being made there, on so late a date as the 5th, consequent on this confession, they were not to be found, though marks of blood are said to have been visible.

witnesses under examination, and which agrees with the tenor of the prisoner's statements. In Roopa's, that he could not produce the jewels, and in Boodhun's, that he had buried them where they had been found. Their house consisted of two rooms on the ground-floor to the southward, with upper rooms. Above were found the deceased's clothes saturated with blood, below the sword, said by the prisoners to have belonged to the deceased, also stained. In the rooms below, spots of blood partially erased, and a small earthen grain jar on the eastern one thoroughly stained. Across the yard, on the North-east corner, is the cooking-room, where Boodhun's wife, Musst. Luchmunee (witness No. 1) slept. Here, in a corner, under the mill-stone, slightly buried, the deceased's jewels, some fourteen pieces, were found tied up in her jacket and all stained with blood. These articles, as thus produced in court, were all recognized as having belonged to the deceased, and the earthen grain jar to the house by witness No. 1, the jewels and clothes by witness No 13, and the jewels by witness No. 14. I must add however that Girdharee (witness No. 8) was either wilfully or stupidly oblivious of Roopa's mention of the jewels in his confession, and which therefore he was not allowed to verify.

Boodhun's defence before the police set up that the deceased was constantly quarrelling with him, because he would not turn his wife (witness No. 1) out of the house ; and on the night of the occurrence, on her abusing him grossly, he struck her with his fist, and pushed her, when she fell on the mill-stone, cutting her head open, and his father also struck her two or three times with his fist, when she died. The body was afterwards disposed of by his father, as already stated, but in his absence, as he had left for Puchainpore.

Before the magistrate, Roopa's criminating statement, in the presence of witnesses Nos. 10, 11 and 12, contradicts his mofussil confession, by adopting Boodhun's tale of the deceased having come to her death by falling on the mill-stone, which cut open her temple ; with this modification that it was himself who pushed her on the mill-stone, and not Boodhun. He then disposed of the body as already shown. He offered no explanation regarding the state of the sword-wounds on the deceased's person, but when questioned, replied that they must have happened whilst dismembering the body. His defence before this court is much to the same effect, with the addition that he was in trouble in his caste regarding the deceased, who was always abusing his son or himself. He has never called any witnesses.

Boodhun's defence before the magistrate also varies accordingly, adding that he ran away, annoyed at his father's interference, and passed the night at Boodhun's, which Boodhun and two

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other witnesses, summoned by him before the magistrate, denied. He called no witnesses before this court, and set up a new story as to his total ignorance how the deceased had come by her death, as on his father's interference, he went away to another room and fell asleep; and the next morning, when one of the children commenced crying, Roopa told him that deceased had left for Low. He then wanted Nankoo Gwala (witness No. 14) to look for the deceased, although both before the police and magistrate he had named him together with witness No. 15, as having been familiar with the deceased, and for which he had remonstrated with her only four days previously.

Musst. Luchmunee is the only eye-witness forthcoming, and her evidence turns with the varied pretences set up by both prisoners, its leaning, as is manifest from the object of such pretences, being to screen the husband in preference to the father-in-law. She adopts, both before the magistrate and this court, the story of Boodhun's having pushed the deceased on the mill-stone, when Roopa wounded her with a sword, and then threatening her, she retired and kept quiet. She has differently stated that Boodhun had gone away into another room, and also that he was asleep, though, according to her own narration, as well as the prisoner's criminating statements, the two facts of Boodhun's presence, and the deceased's murder must have been instantaneous.

The *futuca* of the law officer, taking exception to the insufficiency of the evidence of the only eye-witness, and that of a woman, and receiving the confessions and circumstances of the case as presumptive only to such extent, convicts the prisoners of the culpable homicide of the deceased and declares them liable to punishment for the price of blood by *deyut*.

I cannot concur in this finding, because the pretence of the deceased's death having been caused by her falling on the mill-stone, is a manifest impossibility in the face of the *corpus delicti* which has been so fully and unquestionably established. No search was ever made after this mill-stone, but whether it had an iron or wooden spindle, the former rarely the case,—supposing, too, any thing of the kind possible, which, the circumstances stated by the prisoners do not warrant,—is immaterial, because the *post mortem* proves, that the deceased's death could not have been caused either by falling on the slightly projecting spindle, always blunt, or even by coming in contact with the mill-stone. Dr. Diaper's evidence is conclusive in this respect. Roopa told the magistrate, that the fall had laid open the deceased's temple, whereas Dr. Diaper found besides the mortal wounds on the arm, the oblique deep gash on the left temple sufficient of itself to cause death, and which must have been inflicted with some strong sharp-cutting

instrument, as a *tulvar*, *busoola* or *koolarce*. The same reason sets aside the eye-witness Musst. Luchmuneea's evidence to such extent, and yet maintains the main facts of the case, which seem to me natural and consistent throughout. The deceased was Boodhun's concubine, who came to a violent death, as brutally, as it was secretly, executed, as established by the *corpus delicti*, inside the prisoner's dwelling, of which father and son were the sole male occupants.

The crime was at first successfully* suppressed, unknown to the neighbourhood, as accords with the circumstances of the body having been retained the whole day, (Tuesday,) in the house, and the dismembering of the body to render it portable to a distance with less risk of detection. The prisoners' confessions, or criminatory statements, cannot avail them in any way, when every statement made by them, except Roopa's original confession, is at variance to, or irreconcilable with, the *corpus delicti*. Roopa's presence at the foul deed, and its suppression, is sufficiently made out by his own confessions or criminatory statements, and though Bundhoo's have not been finally treated as confessions, yet each of the three defences set up by him, irrespective of their gross inconsistencies, essentially contradicts one another. Before the police he stated he had buried the jewels, where they were found : before the magistrate he signally failed to prove his absence at his namesake's (Boodhun's) at the time of the occurrence, and which he himself ignored in his defence before this court, when he declared he had slept all night in the house and remained there until the following evening, having contented himself in the morning by hearing from his father that the deceased had started for Low. If the truth of a case against a person is to be judged by all his conduct taken together, here is conduct thrice self-stated, either one of which is irreconcilable to the other, or the facts of the case itself. Under such circumstances, his wife Luchmuneea's testimony, in as far as regards his presence in the house at the time of the occurrence, is maintainable, and it is impossible that a crime, in all its details, like the one under trial, could have taken place within so confined a dwelling, without his full cognizance and complicity. The deed is an atrocious one under every aspect ; for even supposing the unfortunate deceased had given any real cause of offence, regarding which nothing but inconsistent assertions have been offered, yet, in her helpless position, the prisoner Boodhun was her sole

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* Perhaps even Keywul Chowkeedar of Raneegunge, (*vide* his statement No. 55), whose shed was actually opposite the prisoner's house, unless he wilfully misdirected Dursun Chowkeedar, (witness No. 18,) in the first instance, and proof of which is wanting

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protector as long as she continued within his walls, out of which, at any time, with or without fault, he might have turned her as easily as he had admitted her. In failure of direct reliable evidence, as to the particular guilt of each prisoner, I convict both of the wilful murder of the deceased, which barring capital punishment to the best of my judgment, leaves no other punishment adequate to such a crime, short of each being sentenced to imprisonment for life in transportation beyond sea.

Remarks by the Nizamut Adawlut—(Present: Messrs. J. Dunbar and H. T. Raikes.)—We think the circumstantial evidence in this case, is sufficient to convict the prisoners of this murder on violent presumption.

The deceased, while living, had been an inmate of their house for some months, and the marks of blood then seen, and the discovery of her clothes and ornaments, &c., stained with blood, leave no room to doubt that the murder was there committed. It is also deducible from the mutual admissions of the prisoners, when first apprehended, that they dismembered the body and aided each other in disposing of the parts, in the hope of concealing the death.

Under such circumstances, unless the prisoners can in some degree explain away, or account for appearance so much against them, no consistent belief of their innocence can be entertained.

The only account which they have offered in their various statements is, that the deceased fell by the blow or push of one of them, and sustained such injury by falling against a mill-stone, that she died.

But such a cause of death is altogether irreconcilable with the appearance and nature of the wounds found on her person, at the *post mortem* examination, and which, from their severity and deadly effect, prove beyond a doubt, that the woman's assailant must have used a deadly weapon and with the full intent of taking the woman's life. The wounds on the arm, and severing the hand at the wrist, were probably the consequence of the deceased's having attempted to guard her head from the blows of the murderer.

Both prisoners admit that they were present when the woman died, and both admit that she died a violent death, and these admissions are in entire accordance with the statements of the witness Luchmuneca, which on this point have been consistent at every stage of the inquiry.

We convict the prisoners of aiding and abetting each other in the murder of the deceased, and giving them the benefit of the doubt, as to the actual perpetrator of the deed, we sentence them to imprisonment, with labor and irons, for life in transportation beyond sea.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT

versus

GOORDYAL KOONER (No. 19 APPELLANT,) PREM KOONER (No. 20 APPELLANT,) DOODRAJ KOONER (No. 21 APPELLANT,) AND MOHUR KOONER (No. 22 APPELLANT.) MUNORUTH No. (23.)

CRIME CHARGED.—No. 19, wilful murder of Toolsee Kooner, deceased; Nos. 20 and 21, 1st count, wilful murder of Toolsee Kooner; 2nd count, accessories before and after the fact, and 3rd count privity to the above murder; and No. 22, 1st count, accessory after the above fact, and 2nd count, privity to the above murder.

Committing Officer—Mr. T. Ravenshaw, joint-magistrate of Bhaugulpore.

Tried before Mr. R. H. Farquharson, sessions judge of Bhaugulpore, on the 5th August 1853.

Remarks by the sessions judge.—Prisoners all plead *not guilty*. The joint-magistrate's abstract of examination and grounds of commitment are clear and complete.

Toolsee, the murdered man, was known to have an intrigue with the widow of Goordyal's (prisoner No. 19's) brother, deceased, who was also son of Prem, prisoner No. 20. This woman, named Jugroopoo, died, it was suspected, of poison, self-administered from shame at finding herself with child by Toolsee. At her *shradh*, the usual feast was held at Prem's house. When all the guests had departed, a man was sent for Toolsee to ask him to come and partake of the food prepared. He came, but had hardly sat down to eat, when he was seized by the arms by Prem and Doodraj (No. 21,) and speared in the side by Goordyal. He died almost immediately, and his body was carried out by prisoners Nos. 19, 20 and 21, and joined at the door by prisoner No. 22, the four taking it away and throwing it into the Dukra Nuddee about half a coss from Prem's house, where it was found by the thannadar and sent into the sudder station and examined by the civil surgeon (witness No. 13,) who deposes distinctly to the wound causing death.

Witnesses Nos. 1 and 2, depose to being at the time in the verandah of the house, where the deed was done; they are mother and son of the barber caste. The mother, Gungeea, (No. 1,) deposes to have been in all the secrets of the family; swears to the intrigue between deceased and Jugroopoo; swears to the latter having been four months gone with child, when she

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others.

Three pri-
soners convict-
ed as accom-
plices in wil-
ful murder
and sentenced
to transporta-
tion for life.
A fourth con-
victed as an
accessory af-
ter the fact,
sentenced to
seven years'
imprisonment.

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others.

died ; swears that she (witness) and Poorun were in the verandah of Prem's house, when the deed was done ; that the guests had all gone home, when Heerun Hajam was sent to fetch Toolsee. This was after midnight. Towards morning Toolsee came, &c. &c. as before described. She says it was a moonlight night ; remembers well that it was so. First says the deed was done in the verandah, within a *hath* or two off where she was standing, and theft that it was effected within the one door that opened into the verandah. Poorun tells much the same story, except saying the night was dark, and being consistent throughout as to the deed being done within the house, that he saw it through the open door. Gungee, however says, that deceased had eaten and washed his hands before he was slain ; Poorun, that he had hardly begun to eat, when he was seized and speared. Of the other witnesses, Shoomrun Roy, (No. 3,) had come by accident to the house and partaken of the funeral feast, was sleeping outside the door, heard a cry in the house, and some one calling out *bapre bap*. Saw prisoners Nos. 19, 20 and 21 come out with a body slung in a cloth on a pole and prisoner No. 22 join them at the door.

Witnesses Nos. 4, 5 and 6, were very early in the morning in the fields. Saw prisoners Nos. 19, 20, 21 and 22, carrying a body slung on a bamboo and saw them throw it in the dry bed of the *Dukra Nuddee*, among some *bair* bushes. Saw them returning, when Doodraj had the bamboo over his shoulder.

Kealee Roy, (witness No. 16,) was the first to find the body, he told Doobree, (No. 17,) who immediately gave notice at the thanna of Beegoo Serai, two coss from the spot. Kealeo says Toolsee was quite dead when he saw the body. Doobree says the eyes were open and a sobbing motion still apparent.

Two witnesses* not named in the calendar were examined by this court at the instance of the prisoners' legal adviser. They are Jhummun, father of deceased, and Heerun, stated by witnesses, Nos. 1 and 2, to have been sent to fetch Toolsee to Prem's house on the night of the murder. Jhummun says Toolsee was with him at the early part of the feast, that they went together, and returned home together, when Toolsce taking his *lotah* and *dhotee* went off to the river. That he heard afterwards that he had been killed by some one, but did not suspect any of the prisoners, who were all friends and brethren. Denies the story of the intrigue, and says Jugroopoo died of cough and cholera.

Heerun says, he is the family barber in Prem's house ; that Toolsee was, at the early part of the feast, but came separate from his father and went home separate ; swears he was not

* They had been examined at the foudaroe, and Jhummun was included, I find, as witness for the defence.

sent to fetch Toolsee and denies the story of the intrigue ; says Gungeea and Poorun (witnesses Nos. 1 and 2) are not the family barbers of Prem's family as they assert to be ; and that they were not, either of them, at Prem's house on the night of the *shradh*.

Prisoners Nos. 19, 20 and 21, in their defence, say that they know nothing of the matter ; that Toolsee was murdered in Khutawan, where the body was found : they attribute enmity to Gungeea and Poorun, and say that Poorun was seized and tied up by the darogah on suspicion of the murder, when he and his mother turned on them with this accusation. Mohun (No. 22) pleads an *alibi*. Munoruth (No. 23) says he had no time to give notice, the Khutawan Chowkeedar had given it before he could possibly have ascertained the facts.

Some forty witnesses are called to the defence, but all they can attest is, that they were at the feast at Prem's house ; they one and all say that Toolsee was there too, but went away early. Mohun's witnesses say, he, Mohun, had gone away some days before Toolsee's death to buy seed and did not come back till two days afterwards. The witnesses are all of the same village and caste with prisoners. The evidence is generally vitiated, however, by the contradiction of its main feature by Jhummun himself, who swears that he and his son Toolsee went to, and came from, the feast together, while all the witnesses say Toolsee went home early while his father remained to assist in doing the honors of the feast.

The jury bring in a verdict of *guilty* of being accessories after the fact against Nos. 19, 20, 21 and 22 ; of *not guilty* in favor of No. 23, in all of which I concur.

I am much inclined to doubt the evidence of witnesses Nos. 1 and 2, the woman is far from being clear or consistent in her statement. I consider it, moreover, a scheme pre-concerted, as they make this out, to have been a moral impossibility that the murder (and in this instance nothing less than murder could have been intended) should have been committed in the presence of two or three witnesses as described by them. I am inclined, however, to accept the evidence of Jhummun, Rummun and Bhichook, (Nos. 4, 5 and 6,) and convict prisoners Nos. 19, 20, 21 and 22, of being accessories after the fact to the murder of Toolsee, and would sentence them to fourteen (14) years' imprisonment with labor in irons.

Munoruth, (prisoner No. 23,) I see nothing against. He may have been at the feast, as almost all the witnesses to the defence were, without knowing of the murder. The body may easily have been taken out of his beat without his cognizance, and notice was given by Dookree Chowkeedar so soon after the murder that I hold Munoruth's excuse to be good.

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Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The prisoners are charged with the wilful murder of Toolsee Kooner, and are convicted of being accessaries after the fact, by the jury and the sessions judge, who would sentence them to fourteen (14) years' imprisonment with labor in irons. Another prisoner, No. 23, Monoruth has been released.

Two eye-witnesses to the fact, Poorun Hujum and his mother, Gungeea, servants of the prisoners, who had been attending at the *shradh* of Musst. Jugroopoo, the daughter-in-law of No. 20, have distinctly sworn that the prisoners Nos. 19, 20 and 21 murdered Toolsee, whom they had called from his house, inviting him to the feast. The deceased was generally believed to have had an intrigue with Jugroopoo, who became *enciente* and took something which killed her. The prisoners, her relatives, availed themselves, as the witnesses state, of the occasion of her *shradh*, when all the connexions of the family had taken their departure homewards, to send for Toolsee, also a connexion, and on his entering the room and sitting down to eat some food offered him, Nos. 20 and 21 seized him by the hands and feet when No. 19 speared him through the body, and he died on the spot. Another witness, Shoomrun, has sworn to hearing a cry ; he was in a house near that in which the murder took place, and saw the four prisoners go out with a corpse just before day-light. These witnesses have all consistently deposed, from first to last, to the above effect. The sessions judge doubts the evidence of the eye-witnesses. “The scheme was preconcerted as they make it out, and he considers it a moral impossibility, that the murder should have been committed in the presence of two or three eye-witnesses as described by him.”

Had the prisoners been aware that any of the party, who had been present during the feast, had remained in or near the house, it is not to be supposed, that they would have allowed them to witness what they were doing. Musst. Gungeea and her son, Poorun, had attended the ceremony in their capacity of servants (barbers.) Soomrun had occasion to remain there in an out-house. Heerun, brother-in-law of Musst. Gungeea was sent, as she and her son depose, to bring Toolsee ; Heerun denies the fact, and says neither Gungeea nor Poorun were at the feast ; this, however, is not urged by the prisoners. The father of the deceased, who had with him been at the feast, at once when examined by the police, on the 11th June, the day following the night of the murder, said he had no suspicions against any person, and that his son's head was somewhat affected.

There does not appear to be any very strong reason for discrediting the evidence of Gungeea and Poorun, supported as it is by Shoomrun, who saw the prisoners take a corpse out of

the house just before day light, and by the evidence of Jhummun Roy, Rummun Roy and Bhichook, upon whom the sessions judge relies. These witnesses depose in the foudjaree court to having seen the prisoners carrying away a corpse, which they threw down on seeing him in the Dukra Nullah, where it was found immediately with the entrails protruding from the spear wound. In the sessions they spoke only of something bound in cloth.

The prisoners, save No. 22, who pleads *alibi*, plead *not guilty*, deny having carried off the corpse, and say, they heard of Toolsee's death at Katawun. The above facts afford the strongest presumption, that the prisoners Nos. 19, 20 and 21 were at least accomplices in the murder, and No. 22, an accessory after the fact, while the defence set up tells as much against the prisoners as the evidence for the prosecution.

I concur with the sessions judge and jury in considering the prisoners *guilty*; but I am of opinion that the evidence on the record and the circumstances of the case, justify the conviction of the prisoners Nos. 19, 20 and 21 of being accomplices in the murder. I therefore sentence them to transportation for life. I convict the prisoner No. 22 of being an accessory after the fact, and sentence him to seven (7) years' imprisonment in the zillah jail, also with labor in irons.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH KANOO.

CRIME CHARGED.—Wilful murder of Sheikh Baboo, his son, aged 6 years.

Committing Officer—Mr. R. P. Harrison, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 23rd August 1853.

Remarks by the sessions judge.—This is a very distressing case, and is very briefly told in the words of the prisoner himself, who confessed both before the police and the magistrate, and was in fact the first to make known to witness No. 8, one of the residents of the same village as himself, that he had killed his son.

The following is an abstract of the prisoner's confession recorded before the police, on the 26th July 1853, and that made by him before the magistrate, on the 28th idem, is the same in substance.

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Case of
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KOONER and
others.

CUTTACK.

1853.

September 17.

Case of
SHEIKH KA-
NOO.

Prisoner
convicted of the
wilful murder
of his son from
the want of
means of sub-
sistence. Sen-
tenced to im-
prisonment for
life.

1853.

September 17.

Case of
SHEIKH KA-
NOO.

"I was married by *niha* to a female, who could not support or take care of my child, and about a month ago, I took and placed her in the house of her maternal uncle, Keena Shah, at Rajpore, and last Sunday morning, while my son, Sheikh Baboo, was sleeping on his bed, I conceived the idea of killing him, and of some day of putting an end to myself, so that I would no longer be distressed for the means of subsistence. I then took up the *chucklee** or millstone and threw it down on the right side of my son's head, when blood issued from his mouth and nostrils, and after making a few groans and struggles, he died. I then gave information to my nephew; Amboo, and Gooman Beg and Laloo Beg and Chunder Mullick, villagers, having heard of it arrested me and gave information to the thannah."

The witnesses to the mofussil and *foujdaree* confessions, depose to their having been voluntarily made, and witnesses, Nos. 1, 8, 9 and 10, depose to the prisoner's having confessed to them on Sunday, the morning of the occurrence, that he had killed the deceased.

The prisoner pleaded *guilty* before this court, and stated that he had nothing to urge in defence.

The *futwa* of the law officer convicts the prisoner of the wilful murder of his son, Sheikh Baboo, and declares *kissas* or capital punishment barred by the *Mahomedan* law, in consequence of the relationship between the prisoner and the deceased.

The case is a perfectly clear one, admitting of no extenuation, and fully concurring in the conviction of the prisoner, it is my painful duty to recommend that he be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—There is every reason to believe this unfortunate man's account of the murder of his own son is quite true. The neighbours say, he was reduced to the greatest distress and had sold all he possessed for his family's subsistence, having nothing to give his child, who had been crying for food. Tormented by these appeals, which he was no longer able to satisfy, I doubt not he committed the deed when the child fell asleep, and I am happy to find that precedents of this Court are not wanting to justify my passing a sentence more in accordance with the feelings the prisoner's unhappy fate excites, than a sentence of death would be. I therefore convict him of the crime charged, but under the circumstances of the case, and the precedent in the case of *Musst. Indromony*, page 311, of Vol. IV. of Nizamut Reports, I sentence him to imprisonment in the zillah jail for life.

* Weight of the millstone 10 seers 7 chittacks.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

MAHOMED SUBBEE.

CRIME CHARGED.—Perjury, in having, on the 16th April 1853, deposed, under a solemn declaration taken instead of an oath, before the law officer of Backergunge, that between himself and the prosecutor, Ameer Raree, no relationship existed, and that the name of the father of Ameer Raree was Mahtabooddeen Raree, and that his (prisoner's) grand-father was Sheikh Mahtabooddeen; and that there was no relationship between his (prisoner's) grand-father, Mahtabooddeen and Ameer Raree, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 22nd July 1853.

Remarks by the sessions judge.—The prisoner was under examination on oath in a case under trial, before the law officer, in which one Ameer Raree was prosecutor. He then affirmed, that there was no relationship whatever between Ameer Raree and himself, and herein lies the perjury, as it has been proved by witnesses, and afterwards allowed by the prisoner himself, that he is the nephew of the prosecutor Ameer.

His motive in denying the existing relationship seems to have been simply to obtain greater credibility for his testimony, thinking that the word of a witness unconnected with the party, on whose side he was giving evidence, would be viewed as more impartial and unbiased than it would be if it became known that he was a relative of the party.

His defence before the sessions was, that he had never been in town before, nor had he ever given evidence in any other case; and it was owing to threats held out to him by Teetye, defendant, that he denied his connexion with Ameer Raree, the prosecutor.

The jury brought in a verdict of *guilty*, and concurring in this finding, I sentenced the prisoner to the usual term of three (3) years' imprisonment.

BACKER-GUNGE.

1853.

September 19.

Case of MAHOMED SUBBEE.

Prisoner convicted of perjury, in having denied his relationship to the party in whose favor he was giving evidence, sentenced to three years' imprisonment. In appeal sentence reduced to one year.

1853.

September 19.

Case of
MAHOMED
SUBBEE.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The conviction is good, but there are grounds for mitigation of punishment. As the prisoner admitted his guilt immediately to the law officer, he may possibly have been, as he alleges, under some degree of confusion when he gave his evidence. The sentence is reduced to one (1) years' imprisonment with labor.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND DHUNUNJOY KURMOKAR
versus
GOSSAIN DASS MUNDUL.

DACC.

1853.

September 19.

Case of
GOSSAIN DASS
MUNDUL.

The prisoner, an old offender, convicted of perjury and theft, and sentenced to seven years' imprisonment. Appeal-rejected.

CRIME CHARGED.—1st count, burglariously entering the house of Dhununjoy Kurmokar, prosecutor, and stealing therefrom a brass *lotah* to the value of 6 annas 6 pie; 2nd count, receiving and possessing the said property, knowing it to have been acquired by burglary.

CRIME ESTABLISHED.—Burglary and theft at the house of the prosecutor.

Committing Officer.—Mr. C. Mackay, principal sudder ameen, exercising powers of a magistrate at Furreedpore.

Tried before Mr. G. P. Joycester, officiating sessions judge of Dacc, on the 9th August 1853.

Remarks by the officiating sessions judge.—At midnight of the 6th June, the prosecutor was awakened from sleep by a man's hand touching him; getting up, he saw and seized the prisoner, who struggled violently; but the prosecutor being assisted by Bierob Kurnokar, who was sleeping in the same house, effected the prisoner's capture. The prisoner had made his entrance into the house by digging a hole in the floor, and in it a *lotah*, which the prisoner had removed, was found, and near it a *batalee*, or chisel, which had served his purpose for a *sind-kattee*. The prisoner at the trial pretended to be an infirm man, who was bent double, but this was evidently a piece of deception. The above facts were clearly proved in evidence. The law officer found the prisoner guilty of the charge. I agree in the conviction, and as the prisoner had been before imprisoned for fourteen years for burglary, he was sentenced by me to seven (7) years' imprisonment, in banishment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The proof is overwhelming. In his petition of appeal, the prisoner asserts, that he had gone to the house of the prosecutor and got some food from his mother, when prosecutor came in and falsely accused him. This story is utterly worthless.

with reference to the clear and positive testimony of the prosecutor and his friends, and the repeated confessions of the prisoner,

The sentence is confirmed.

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September 19.

Case of
GOSSAIN DASS
MUNDUL.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

LALL MOHUN DALLO AND GOVERNMENT

versus

GOONAUG GARROW.

CRIME CHARGED.—1st count, wilful murder of Lochun Dallo and Dangshee Garrow; 2nd count, being an accomplice in the above murder; 3rd count, being an accessory after the fact of the above murder; and 4th count, privity to the above murder.

MYMENSING.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensing.

1853.

Tried before Mr. W. Trotter, officiating sessions judge of Mymensing, on the 25th August 1853.

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Case of
GOONAUG
GARROW.

Remarks by the officiating sessions judge.—It appears from the record that the prisoner was visited by his relations, Resing Garrow, Jangjiah Garrow and Teezah Garrow, on the evening of the occurrence, and they consulted with the prisoner as to how they could procure human heads, which, they said, were required to accompany the corpse of one of their chiefs (Bhooeah) who had recently died; that at night they came down to the plains, accompanied with the prisoner, who pointed out where they were to obtain the object of their search. They all then went to a *sursoo* field, where the two deceased persons were watching their crops, but who were then fast asleep on account of the late hour of the night. The parties then attacked these persons with *jhattees* (kind of spears,) and having killed them, cut off their heads and ran off to the hills. This was witnessed by witnesses Nos. 4 and 22, who were also watching their crops in an adjoining field, but who immediately ran away and concealed themselves in a jungle, through fear of the Garrows. Next morning the bodies of the deceased were found without the heads and forwarded to the station, and the civil assistant surgeon deposed to death having been caused by their heads having been severed from the bodies, but that there were other wounds, *viz.*, 20 incised wounds on the body of Dangshee, a rib being also fractured, and 14 severe incised wounds on the body of Lochun, each of which singly would have been sufficient to have caused death, even if their heads had not been cut off.

Prisoner convicted as an accomplice in wilful murder, in an expedition of Garrows to procure human heads for certain purposes. Sentenced to transportation for life.

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Case of
GOONAUG
GARROW.

The prisoner was soon after arrested by the police, and his answer, in the thannah and before the magistrate, is to the effect that his cousin Jangjah Garrow and his brothers-in-law, Resing Garrow and Teeszah Garrow, came to him on the evening of the night of the occurrence, and after eating and drinking at his house, asked him to accompany them at night to point out where they could procure human heads; that he at first declined, but at their solicitation accompanied them to the *sursoo* field; that they assaulted the two deceased persons with *jhatees* and cut off their heads with *digurrees* (kind of Garrow swords); that he (the prisoner) himself did not assault or kill the persons or cut off their heads, but simply accompanied them on the expedition. Before this court, he denied the charge, saying that those three persons became intoxicated at his house, and mentioned their names on the mofussil confession being read and explained to him, and he denied his foudjaree confession, saying that he, at the time it was being taken down before the magistrate, could not distinctly hear.

This case has been pending for a long time, for the attendance of some of the witnesses for the prosecution and those for the defence; and though all possible measures were taken to cause their attendance, they were not forthcoming, having left their homes for the interior of the hills. Only one of the interpreters, Baseeng Garrow (witness No. 11) attended and attested the prisoner's mofussil and foudjaree confessions. I had therefore recourse to one of the prisoners, now under sentence in this jail, Challah Garrow, to act as an interpreter in taking his answer in this court and explaining his former confessions.

The *futwa* of the law officer convicts the prisoner of being an accomplice and accessory to the murder (2nd and 3rd counts) on violent presumption, upon his own mofussil and foudjaree confessions, and declares him liable to the punishment of *akoobut*, in which verdict I concurred. As the only direct evidence in these murders is the prisoner's mofussil and foudjaree confession, in which he only admits having accompanied three other persons to the *sursoo* field, I would recommend, under these circumstances, that he be imprisoned for life, with labor and irons, in transportation beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoner, in his foudjaree confession, states that the other three Garrows forced him to accompany them. There is no description of the particulars or nature of this compulsion; but there being no other evidence than his confessions against him, I am unwilling to reject the recommendation of the sessions judge; that as the prisoner appears not to have

been a principal actor in the murders, his life may be spared. I sentence him, therefore, as proposed by the sessions judge, to transportation for life.

I observe that the darogah, in his report of 19th December, a fortnight after the murders had been committed, stated only, in general terms, that *he had heard* that the prisoner, with other Garrows, had been concerned in them, and that he had, therefore, apprehended the prisoner, who had confessed the part taken by him. The exact clue, which leads to suspicion having been directed against a prisoner, that is, the precise nature and extent of the information, which was thought to warrant the apprehension of a prisoner, ought always, I would remark, for the future guidance of the sessions judge and magistrate, to be apparent on the proceedings of a commitment and trial; and the attention of the officiating magistrate must be particularly called with reference to the facts above stated to his neglect in this case, of the express directions of the Circular Order, No. 14, of 9th June 1848, on the subject.

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Case of
GOONAOG
GARROW.

PRESENT:

J. R. COLVIN, Esq., Judge.

GOVERNMENT AND MOHADEB KAHAR

versus

JADOO SHEIKH (No. 1) AND BHOOBUN GHOSE
(No. 2)

NUDDEA.

CRIME CHARGED.—1st count, river dacoity, with wounding, on the boat of the prosecutor's master, in which property to the value of rupees 701-8 was plundered; 2nd count, knowingly receiving and having in their possession plundered property acquired by the above river dacoity, with wounding.

CRIME ESTABLISHED.—Knowingly receiving and having in their possession plundered property acquired by a river dacoity.

Committing Officer—Mr. George Hewett, deputy magistrate of Cutwa.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 21st July 1853.

Remarks by the sessions judge—The prisoners were suspected by the chowkeedar of the village, where they live, of being engaged in the dacoity (the subject of this trial,) on account of their bad livelihood and having been absent from their homes. He made the darogah acquainted with his suspicion, and on being arrested, Jadoo Sheikh, in hopes, no doubt, of being allowed to go free, pointed out where a portion of the stolen property

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Case of
JADOO
SHEIKH and
BHOOBUN
GHOSE.

Prisoners convicted of receiving property acquired by river dacoity, and sentenced to seven years' imprisonment. Appeal rejected.

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Case of

JADOO

SHIEKH AND

BHOOBUN

GHOSE.

was concealed, buried in the sand, near the spot where the boat in the prosecutor's charge had been attacked and plundered. He, however, made no confession nor admission of crime. The other prisoner not only confessed that he had knowingly taken the plundered property, but pointed out a large portion of it, which consisted of new piece-goods and were found buried at about a quarter of a mile from where the boat was attacked. There was no proof of the prisoners having been engaged in the dacoity, so that part of the charge fell to the ground, but their criminal knowledge of it, and having in their possession a portion of the property, was satisfactorily established. Jadoo made no defence and called no witnesses. Bhoobun Ghose repudiated his confessions and pleaded an *alibi*, to prove which he called three witnesses, but on the first being examined, he said he knew nothing, on which he declined having any more examined.

Sentence passed by the lower court.—Five (5) years' imprisonment and two (2) years in lieu of corporal punishment, being in aggregate, to seven (7) years each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoners have appealed, but merely on a few vague assertions, which do not affect the grounds of their conviction, *viz.*, the mofussil confession of No. 2, Bhoobun Ghose, (which is directly of accompliceship in the dacoity and not simply of knowing receipt, as described by the sessions judge,) and the giving up by both of them of portions of the plundered property. The prisoner No. 1 is stated, in the darogah's report of 11th May, to have said to the two *bukundauzes* who apprehended him, that he had received the articles of property pointed out by him from the prisoner No. 2, and that he had then buried them in the sand. This statement appears on no part of the record of trial, except that one of the *bukundauzes*, Gopal Ghose, (witness No. 1,) there deposed that the prisoner said, after his apprehension, that Bhoobun Ghose, (prisoner No. 2,) carried off the remainder of the property. Both the *bukundauzes*, however, had deposed before the magistrate precisely to the effect of the statement in the darogah's report. The other *bukundauze* was not examined on the trial. The investigation of the sessions judge has been defective in not having noticed this point, which is material in considering the exact degree of guilt of the prisoner No. 1. As it is plain that the prisoner, on the very improbable supposition of his having found the four pieces of cloth lying on the sand, concealed them there, and the robbery of the boat at the spot must have been notorious; there is, at the same time, sufficient ground of presumption as to the prisoner No. 1 having kept the property,

with knowledge of the dacoity, to justify me in not interfering with the conviction and sentence.

A correspondence* has been held with the sessions judge, in the English Department, in regard to his conviction of the prisoner No. 1.

The sentences on both the prisoners are confirmed.

* Extract from a letter from the register of the Nizamut Adawlut, No. 1039, dated 27th August 1853, to the sessions judge of Nuddea.

The Court, having had before them your letter, No. 186, of the 23rd instant, submitting the statements connected with the sessions of jail delivery held by you in the month of July last, and referring to the case of Jadoo Sheikh and Bhoobun, Nos. 1 and 2, of Statement No. 6, observe from

"And on being arrested, Jadoo Sheikh in hopes no doubt of being allowed to go free pointed out where a portion of the stolen property was concealed buried in the sand, near the spot where the boat in the prosecutor's charge had been attacked and plundered. He, however, made no confession nor admission of "crime."

others. You are requested to submit a further explanation on this point.

In reply to the above letter, the sessions judge explains himself in letter, No. 200, dated 6th September 1853.

I have the honor to acknowledge the instructions of the Presidency Court of Nizamut Adawlut, conveyed in your letter, No. 1039, dated the 27th ultimo, and, with reference to the remarks on the trial of Jadoo Sheikh, beg to observe, that I could not have convicted him only of "privity to the knowing receipt of the property by others," because there was no proof of that crime against him. When he was arrested and gave up the plundered property, it appears, he told the darogah that he found the four pieces of Madras cloth at the spot by the river side, where the dacoity had taken place, and that he then and there took them and concealed them by burying in the sand.

Before the deputy magistrate at Cutwa, he denied that statement, and complained of having been maltreated by the police. Before me he pleaded *not guilty*, made no defence, and called no witnesses to exculpate himself. I was thereupon obliged to be guided by the only proof I could find, and accordingly convicted him on his own statement before the darogah, after pointing out where the plundered property was concealed, and the other prisoner who was his *particeps criminis*, having implicated him of *knowingly having plundered property in possession*. The prisoners have appealed to the superior court, and the papers are being got ready for despatch.

The register in his reply, No. 1086, dated 12th September 1853, wrote as follows :—

The Court, having had before them your letter, No. 200, of the 6th instant, submitting explanation in reply to their remarks on the jail delivery statements for July last, direct me to observe, that the particulars in paragraphs Nos. 1 and 2 thereof, should have been given in your Statement No. 6, for that month.

The case, however, being under appeal, calls for no further remarks in this department.

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Case of
JADOO
SHEIKH and
BHOOBUN
GHOSE.

PRESENT:
 SIR R. BARLOW, BART., }
 AND } Judges.
 J. R. COLVIN, Esq., }

GOVERNMENT AND MUSST. AISHUN

versus

DURAZOOLLAH (No. 11,) FELOO MEERA (No. 12,) IMTEAZ ALIEE ALIAS INTAZ ALIEE ALIAS INSAD ALIEE (No. 13,) BOODHYE (No. 14,) MEAJAN (No 15,) AND KISHORE MAHOMED (No. 16.)

CRIME CHARGED.—Prisoners Nos. 11 and 12, wilful murder of Busharut *alias* Shurwal Khan, prisoners Nos. 13 and 14, being accomplices in the above crime. Prisoners Nos. 15 and 16, being accessories after the fact to the above crime.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 4th August 1853.

Remarks by the sessions judge.—The murder came first to public notice through a petition presented by one Nyemudeen, to the magistrate, on the 7th June. In that he represented that Busharut *alias* Shurwal Khan, the deceased, who was the petitioner's brother-in-law, carried on a small banker's business in Jalukatee Bazar, residing with one Dowlut Beparee of that place. The deceased had an attachment for the sister of one Ashuck, living in the village of Dhapar, whom he constantly went to visit. That one day in *Jeyt*, Shurwal Khan was going to his own house, when on the way near the bamboo bridge to the East of Gorudam, on the Kishenkatee maidan, he was set upon by the said Ashuck and his relatives, Durazullah and others, and by them carried off and confined. That the petitioner now hears that Shurwal Khan has been killed, and since the police would not receive the complaint to the above effect, preferred by Aun Khan, the petitioner had come into the station with his witnesses, Bodae, Meajan, Kishore Mahomed and Imteaz, four of the prisoners, and desired that their depositions might be recorded.

On this petition, without examining him or his witnesses, the magistrate referred the petitioner to the police.

Accordingly, on the 11th June, the petitioner appeared before the darogah, and gave his deposition, after which the darogah deputed the Jalukatee mohurir to investigate the affair.

On the 13th, Dowlut Beparee, with whom the deceased resided, was examined. His statement was, that one Terab

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Case of
DURAZ-
OULLAH.

Two pri-
soners convic-
ted as prin-
cipals in wilful
murder, sen-
tenced to im-
prisonment for
life. Two
others convic-
ted as accom-
plices in the
same crime,
sentenced to
fourteen years'
imprisonment
in banishment,
and two others
convicted as
accessories
after the fact,
sentenced to
imprisonment
for seven
years.

had told him that some nights, before he had seen the prisoners, Imteaz, Boodhye and Meajan, carrying away a body.

Torab was then sent for and underwent his examination the same day. He confirmed the statement of Dowlut and proceeded to give at length all the information he possessed. He stated that about the beginning of Jeyt, one evening, at about 7 o'clock, Boodhye came in a flurried state to his own house, from the direction of a jungle to the North, speaking to Bogae's mother, Poonee, how Shurwal Khan had been caught by some persons and himself, and hit with a bamboo. She called Charu's mother, who having heard Boodhye's account, rebuked him for not having called out for aid, when Shurwal was being carried off. After this, Boda told Charu and Suleem to go and call his brother Meajan, and his brother's wife, Kishore Mahomed. When these came, Boodhye took them with him to Jalukatee. The witness, with Charu and Suleem, went away each to his own house to sleep. After this, at about $1\frac{1}{2}$ hours of night, Boodhye, Meajan and Kishore Mahomed came back to Kishenkatee, accompanied by Imteaz Alee, who was sitting in Meajan's verandah and talking in a low voice in consultation of some matter. The witness and Charu went and stood unseen by a corner of the house, to overhear what was said. Presently they saw Meajan take a large deep mat basket (used for keeping rice generally, about four or five feet high and about three feet in diameter) out of the house, accompanied by Boodhye, Imteaz and Kishore. The four went towards North-west of their house. Witness and Charu, being inquisitive to see what was going to happen, followed secretly a little distance behind. Under a tree, on the deserted *beeta* of Hoboo's mother, the four took up the body of a man, and putting it into the basket, Imteaz, accompanied by the other three, carried it on his head in the direction of Gorudham Khal. The witness immediately guessed that the body was that of Shurwal. After seeing this much, he and Charu went to their own homes to sleep. The moon was shining at the time. Witness had been told that with Imteaz and Shurwal a quarrel existed on account of money transactions. Has heard that Shurwal Khan had an illicit attachment for the sister of Boodhye and Meajan, and Kishore is brother of Boodhye's sister's husband.

On the 15th, the darogah having heard from the mohurir that the case was a serious one, and that a good clue had been obtained, proceeded himself to the spot. After taking the deposition of Charu, who corroborated the statement of Torab, and the evidence of Suleem and Charu's mother, Poonee, who each verified Torab's statement as far as from his depositions their knowledge was said to extend, the mohurir brought up Imteaz and Meajan. Both confessed in

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DURAZ-
OULLAH.

some degree to a participation in the crime. The confession of Imteaz extended to his presence at the time and scene of the murder. The latter admitted being an accessory after the fact.

On the 16th; the deposition of Haneef was taken, and then the answer of Kishore : he also made a confession of accessoryship after the fact.

On the 18th, the confessions of Duraz, Feloo and Boodhye were recorded. The two former confessed to the actual murder and the latter to his presence there and then.

On the above parties being forwarded to the magistrate, all but Duraz adhered to the statements made by them severally in the mofussil.

As the confession of each is the strongest evidence of the degree of guilt of each, I subjoin at full length the several confessions.

*The confession of Durazoollah taken at the thannah on the
18th June.*

Question.—Have you conjointly with other defendants killed Shurwal Khan?

Reply.—Insad Alee, Boodhye, Feloo, Meera and myself jointly assaulted Busharut *alias* Shurwal Khan with clubs, and did kill him.

Question.—Describe the mode in which you killed him and your motives for so doing?

Reply.—Three or four days prior to this occurrence, being in terms of enmity with Insad Alee, I accompanied him to his lodgings. Boodhye also came there. Insad Alee being indebted to Shurwal Khan, they had frequent altercations together, and no good feelings existed between them. Foolsun (the sister of Boodhye) held illicit intercourse with Shurwal Khan. Boodhye entertained enmity against him on that score. Boodhye, Insad Alee and myself, consulting together, resolved on the murder of Shurwal Khan, and if the project succeeded, we intended to possess ourselves with the money that he had in cash and by setting up one of ourselves to represent his heir, and the others testifying in his behalf to recover and appropriate the outstanding debts that were due to Shurwal Khan. Insad Alee added that if the murder of Shurwal Khan was determined upon, it would be necessary to give him a companion. He took me and Boodhye to the lodgings of Menjan mason and revealed to him the intended project. Meajan said he would first consult with his friend Insad Alee. We returned home. Insad Alee and Boodhye desired me to procure the further aid of an individual to join in the deed. I proceeded to Bareegatee, where resided Feloo Meera, son-in-law to Jahangeer, brother to the father-in-law of Shurwal

Khan ; and promising to reward him rupees 5, if he would join us, he consented. At about 6 *dunds* before sunset, Feloo Meera, with a bamboo club in his hand, and I with a stick, made of betel-nuts, set out. Concealing our arms near a plantain tree on the West of the bridge over the Gorudam Canal, we entered the lodgings of Insad Alee. Boodhye was called in. I paid Insad Alee 1 rupee 8 annas to procure us the aid of another individual. Boodhye said that on the pretence of a ramble I will take Shurwal Khan through the *bunder* : do you follow us. A *dund* before evening, Boodhye took Shurwal Khan ; about dusk, we three left the *bunder*, taking with us the bamboo club and the betel-nut stick we had left in concealment. On reaching the Gorudam Bridge, Boodhye joined us there, coming from the house of his father-in-law Chand. He stated to us who were there standing ; that he had brought Shurwal to visit his father-in-law. He then made us sit on an elevated place near a bridge over a small khal, situated to the South of his father-in-law's house, telling us that he would fetch Shurwal Khan to the spot at about two hours of the night. Boodhye again came to us to tell that it would not be prudent to kill Shurwal Khan in such a thoroughfare, but that when he was passing through a jungle on the way to his (Boodhye's) house, we will there destroy him. He made us sit North of the site of a house under a mangoe-tree. Afterwards, he came accompanied by Shurwal Khan. On reaching the West of the mangoe-tree, Feloo Meera first struck a blow with his bamboo club on Shurwal Khan : we four of us laid hold of him. Shurwal Khan cried aloud two or three times, on which I struck him with the betel-nut stick and Feloo Meera repeated his blows with the bamboo. Shurwal Khan's head was split. Boodhye, Insad Alee and I kept Shurwal Khan firmly pressed to the ground, until life had become extinct. We took up the corpse and concealed it in a ditch within a low bush jungle to the East of the site where the murder was committed. I brought away a torn *chudder* of red toon, which I subsequently cast into the Sootalaree Khal, but it floated back and it is still to be seen on the banks, and I can point out the place.

The betel-nut stick with which I assaulted the deceased, I left in Jubar's verandah, village Banashupore, where it may still be found, if not removed.

After Shurwal Khan's murder, Feloo and I went together as far as Beesye's house in Dhapar : from thence Feloo proceeded to his own house. As I was passing Kalee Chowkeedar's door, he saw me and inquired where I was going. I told him to Boodhye's house. I returned to Lashpurtab village and slept in the house of Wuzeer Akhond. I left Boodhye and Insad Alee near the body.

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Case of

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September 20. Question.—When you murdered Shurwal Khan was there

any money on his person ?

Reply.—He had none.Case of DURAZ-Z-
OULLAH. Question.—Did you receive any money or other property after this murder ?*Reply.*—I received nothing. Boodhye and Insad Alee promised to give me a share of the money that they were indebted to the deceased, but they did not do so.

Question.—Without deriving any advantage, what could induce Feloo Meera to consent to the commission of this murder at your bare instance ?

Reply.—He owes me kindness. I had moreover promised him a *douceur* of rupees 5.

Question.—In what relationship did the deceased stand to you ?

Reply.—He was a friend to Kuree Moodee, an intimate of mine, and whose father-in-law's house in Nuthoolabad I often visited.

Question.—Is your confession voluntary ?

Reply.—Quite so.

Question.—Can you read and write ?

Reply.—No.

Question.—Has Kalee Chowkeedar said any thing to you about this murder ?

Reply.—The chowkeedar forbade me to mention it, and promised to give me rupees 5 if I gave my deposition against any party, who should be charged with the crime, but I did not listen to him, and have come forward to depose to the whole truth.

Question.—Who is aware of the circumstance of the betel-nut stick belonging to you ?

Reply.—Alee Mahomed, Lal Mahomed Chowkeedar, Me-hur Alee, Meajan, Insad Alee, Feloo Meera and Aleef of Lashpurtab, Sumeer, and Wuzeer Akhond.

Question.—Is there any house near the place where you concealed the stick under the plantain-tree ? and did any one perceive your doing so ?

Reply.—One Jhalo lives there. South of his house is the plantain-tree, and there is a hay-rick there. A widow had seen me on the spot and I told her that I kept the stick there. She is about thirty years of age : fair complexion. I do not know her name.Question.—This *jaulee* (a bag where coins are kept,) given in by Feloo Meera, do you know to whom it belongs ?*Reply.*—It belongs to Shurwal Khan ; he had it on his person at the time of his murder ; it contained one *gathee cowree*, and was taken by Feloo Meera.

Question.—How have you obtained the wound on the forefinger of your left hand?

Reply.—A ratan thorn had penetrated my finger, which festered and produced the sore; this is well known to Kinee of Jynee, Turbeut Khan of Baggatee, Aleef and Samee of Lash-purtab. I got the scratch on the 15th *Jeyt*.

Question.—Why then does Feloo Meera say that the wound is from the teeth of the murdered person?

Reply.—I do not know.

Question.—To whom does this fine *chudder* (sheet,) sown on both ends, a little torn, belong?

Reply.—It belongs to me. On returning from Burrisal, I smoked tobacco under a date-tree to the South-west of Wuzeer Mullick's house, and I left it accidentally there. The red cloth that I had taken from the person of the deceased I had before given it up.

Question.—Is any one aware that the aforesaid sheet is your property?

Reply.—None.

As above remarked, this prisoner did not repeat his confession at the magistrate's court.

The confession of Feloo before the magistrate was :—

Question.—What do you confess?

Reply.—I do not remember the date, but it was thirty days last Friday, Durazoolah, son of Daborg, resident of Banashupore, came to my lodgings and desired me to accompany him to Jalukatee, promising to give me a situation. I followed him, taking a club along with me. He had a club likewise in his hand. We reached Jalukatee and went to the house of Imteaz of Kirteekatee. Durazoolah and Imteaz consulted together, the latter gave the former two pice with some clothes to be taken to the washerwoman. On his return from thence, they again consulted together. I was not let into their secret. Durazoolah purchased some liquid jagry (treacle.) Imteaz Aleec, Durazoolah and myself proceeded homeward. I took a club that I had left in a jhaloe's house. On reaching Churghata, we eat *choora* and met with Boodhye of Kishtokatee. Imteaz Aleec, Durazoolah and Boodhye consulted together. Boodhye told me that Busharut Khan was eating rice. I asked him what he meant thereby, on which Durazoolah told me that Busharut Khan had an attachment for Boodhye's sister, and he explained all about it, on which I asked him the object of these consultations. Durazoolah replied, that Busharut Khan *alias* Shurwal Khan was designed to be killed; that he would reward me with 5, rupees if I would stand by during the act. I refused, but covetousness prevented my leaving the spot. Boodhye went to fetch Shurwal Khan, who was at that time in his (Boodhye's)

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father-in-law's house. Durazoollah, Imteaz Alee and I stood under a mangoe-tree. At about six hours of the night, Boodhye brought Shurwal Khan to the spot, Durazoollah struck him a blow with a betel-nut stick on his left temple; taking the club from my hand he struck him on his body; then seizing his mouth, he held him down, when the deceased bit his finger; releasing it, he threw the deceased on his back, squeezed his throat and mouth, and Boodhye pressed his chest: I laid hold of his hands: Shurwal Khan was thus murdered. Imteaz Alee, Boodhye and Durazoollah threw the body in a *kewa* jungle. Imteaz said that when the night became dark he would remove the body. I asked Durazoollah why he had committed such a deed. He replied, that he was attached to the widow of the deceased, and that he had murdered the husband to marry his widow. Durazoollah and I returned to our respective lodgings. According to Durazoollah's statement I have been apprehended. This is my confession.

Question.—Was your confession in the thannah voluntary or not?

Reply.—Perfectly voluntary; no coercion whatsoever was used; my confession here is just the same.

Question.—The confession taken in the thannah being read to the prisoner, he was asked if such was the confession made by him in the mofussil?

Reply.—This is my mofussil confession.

Question.—When were you apprehended?

Reply.—On last Wednesday.

Question.—When were you sent into the station?

Reply.—Yesterday at about four hours of the night.

Question.—What is the cause of your delay in reaching this?

Reply.—Owing to a storm off Nulchittee we were delayed.

Question.—When did you reach Burrusal?

Reply.—About two hours ago.

Question.—Is this confession voluntary?

Reply.—Quite so.

The confession of Imteaz before the magistrate was:—

Question.—What do you confess?

Reply.—During last Jeyt of the current year, Durazoollah, a person with whom I had acquaintance, but the place of his residence I am ignorant of, came to me with this information, that an individual of the name of Shurwal Khan, dealing in mats and *hogla*, was the husband of his sister, but had absented himself from his wife since his marriage, and asked my advice on the best means of taking him back to his sister. I replied that I could see no other method beyond persuasion, on which he rejoined whether I was aware of any of his particular resorts. I said that he visited various places, on

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which he begged me to point him out the next time I saw him go out. Shortly after, I heard that Shurwal Khan was about to proceed with Boodhye to Sootalaree to fetch some cloth. I intimated this news to Durazoollah. He went to Boodhye's house, and after consulting together returned. Durazoollah remained in the *bunder*. Boodhye and Shurwal Khan went to Sootalaree about three hours wanting to evening. Durazoollah and another man, whose name I do not know, came to me, questioning where was Shurwal Khan, that he had not gone to Sootalaree as I had told him, and telling me that I must point him out; so I went with them. Durazoollah in the way gave me one rupee for my trouble in pointing out to him Shurwal Khan. On reaching Sootalaree, we met Boodhye. Durazoollah inquired where Shurwal Khan was. He replied that he was seated in his (Boodhye's) father-in-law's house. Durazoollah also gave Boodhye eight annas piece and desired him to point out Shurwal Khan. He said he would do so. As soon as he left his father-in-law's house and desired us to remain on an elevated spot, from whence we would be able to discern him readily, I went with Durazoollah to the spot. Shortly after I perceived Boodhye go out with Shurwal Khan towards his house, on which Durazoollah, with his companions, laid hold of him and commenced assaulting him. I ran away towards my own house and Boodhye towards his. At about one *puhur* of the night, after I had taken my meals and was seated, Boodhye, Meajan and Kishore Mahomed informed me that Durazoollah had murdered Shurwal Khan, and begged of me to go with them. I went, and after some search, found the corpse in a neighbouring ditch. They were of opinion that if the body was found so near, the whole of them would be placed in danger. We went to the house of Meajan and brought a large basket of reeds, called a *dola*, in which we placed the corpse. The *dola* was put upon my head and I carried it to the canal of Gorudam, where the body was thrown.

Question.—Was your confession in the thannah voluntary?

Reply.—It was not read to me; if it be read, I will be able to answer the question.

Question.—Is the confession now made voluntary?

Reply.—Yes.

The confession given in the thannah, dated 5th June, being read to him, the prisoner was asked if he had made it.

Reply.—Yes, it was his.

Question.—When were you apprehended?

Reply.—About five days back.

Question.—On what day of the week?

Reply.—Saturday.

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OULLAH.*Question.*—When did you reach the *phandee*?*Reply.*—The very day of my apprehension.*Question.*—How long were you kept there?*Reply.*—Two days.*Question.*—You say that on the day you were apprehended (Saturday) you were sent to the *phandee* and kept there two days, and sent here yesterday, which you reached to-day: how can you then reconcile this in the two days you say you were detained in the *phandee*?*Reply.*—I was sent from the mofussil and kept two days in the *phandee*, after which I was sent to the mofussil.*Question.*—At the time you gave your *ikrar* was any coercion used towards you?*Reply.*—None.

The confession of Boodhye before the magistrate was:—

Question.—What is your confession?*Reply.*—I have no recollection of dates. Sometime ago, about afternoon, Shurwal Khan, who has a shop in Jalukatee, but the place of his residence I am ignorant of, desired me to purchase for him a *dhotee*, as he intended, he said, to go out for a walk. I told him that I had none by me, but I would fetch him one from my house during the course of the evening. The Khan went to the river side, and I proceeded toward the South of the bazar. Shortly after I returned to my lodgings. At about four *dunds* wanting to sunset, as I was proceeding homewards, on crossing the bridge of Gorudam, I reached a plain, where I met Shurwal Khan. He told that he was going towards my house for the promised *dhotee*. We went together. On approaching my father-in-law's house, we met Imteaz Alee (of Bhudra Kartickpore, who has a spice shop at Jalukatee,) Durazoollah and Feloo Meera: the two last were standing with clubs in their hands. Imteaz Alee called me aside to speak something. Shurwal Khan proceeded to my father-in-law's house. Imteaz Alee told me that Shurwal Khan's brother-in-law had come to lay hold of him. I asked him the reason. He answered that Shurwal Khan would afford no sustenance to his wife, and that for the last seven or eight years he had deserted her. Imteaz Alee added that you will keep this as a secret, and presented me with an eight-anna piece. I told him that it would be a difficult matter to take him from our village, but that he might be taken from the *rajah's bunder*. Imteaz Alee added that he would be taken from near the bridge. I went to my father-in law's house and saw Shurwal Khan seated there. At evening we messed together. Shortly after, going out for a necessary purpose, Imteaz Alee came running to me, to tell me that the brother-in-law of Shurwal Khan, who had come to take him, had gone back, so

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return me the eight-anna piece. I did so. Shortly after Shurwal Khan and I proceeded towards my house. When we reached the *cheeta* of Habeea's mother, a waste piece of land, perceiving Imteaz Alee, I asked him if he was returning home. He only said "yes," on which Durazoollah and Feloo Meera laid violent hands on Shurwal Khan. I went to Mutteeollah's house, where all the members of his family were assembled, and informed them what I had seen. We all came out to see who had got hold of Shurwal Khan. We all reached Jalukatee in search of him. Seeing Imteaz Alee we questioned him regarding Shurwal Khan. He answered that his brothers-in-law had taken him, but we wanted to know where they had carried him, on which Imteaz Alee said that they had killed him and left his body near a palm and tamarind-tree. Imteaz Alee Kokie alias Kishore Mahomed, Meajan and myself went to the spot, when the body was pointed out to me. I asked Sulleem what was to be done, and recommended the body to be thrown away. A *dola* was brought from Meajan's house, the corpse placed in it, and it was put on the head of Imteaz Alee and carried to the canal of Gorudam, wherein it was cast. After this we returned to our respective houses. This is my confession.

Question.—Was your confession at the thannah voluntary or coerced?

Reply.—At first the *darogah* demanded something from me and I was beat, but my confession at present is voluntary.

The confession made by him in the mofussil being read, the prisoner was asked if it was his, and whether it was correct?

Reply.—It is mine and is correct.

Question.—What you have heard is it quite correct?

Reply.—It is so.

The confession of Meajan before the magistrate was:—

Question.—What is your confession?

Reply.—During a certain day in the month of *Jeyt*, I do not remember the date, but it was a day prior to the market of Jalukatee, I went to visit Sumeer, my brother-in-law, dwelling in the village of Dhapur. After taking my meal at about six hours of the night, I told Kishore Mahomed that my house being empty let us go and sleep there: they wanted to keep me there, but I came away, bringing with me Kishore Mahomed. On reaching the door of his house, Charu (son of Shureutoollah) and Sulleem (son of Asmutoollah) desired me to enter the house speedily. On asking the reason, they replied that as Boodhoo *Beparee* was going from his father-in-law's house with Shurwal Khan and Imteaz Alee to the *bunder*, Boodhoo *Beparee* was assaulted and Shurwal Khan forcibly

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carried away by five or six persons. I expressed surprise and said "Why did he not call for aid when the act was committed;" they said, "Go and see Boodhye, he is lying at Bhasye's mother's house, and you can ascertain the whole of the facts from him." Kishore Mahomed, Sulleem, Charu and I went together to Sulleem's house. Charu's mother being there, we asked her Boodhye's case. She also said that Boodhye had come running and Shurwal Khan was carried away by certain persons. I went and asked Boodhye, who said the same thing, *viz.*, that Shurwal Khan had been seized and carried off by his brother-in-law Durazoollah: that if we went to Inteaz Alee's at Jalukatee, we would obtain the particulars. Boodhye, Kishore Mahomed and I proceeded to Jalukatee, Boodhye alone going up to Inteaz Alee, we two keeping back. He asked him where Shurwal Khan had been taken to. He replied that his brother-in-law had done it. On being repeatedly asked to tell us the truth, he confessed that Durazoollah and Feloo Meera had murdered Shurwal and that his body was lying in the jungles. I requested him to show us the body. Several of us went with him. He pointed out a corpse, telling that the body was concealed therein. Afterwards they returned to my verandah and consulted together what was to be done with the body. It was at last resolved to throw the body into the canal. A *dola* was brought by Boodhye and Imteaz. Kishore Mahomed and I followed to see the end. The corpse being brought out from the jungle was placed in the *dola* and borne by Imteaz Alee to the canal of Gorudan and thrown therein. We returned home. Next day I saw the *dola* in our tank. I took it up and threw it in the river, fearing the consequences if it should be seen near my house. On the market day, I told the whole of these facts to Aleef chowkeedar, who forbid me to reveal the matter to any one.

The mofussil confession, dated 15th June, being read to him, he was asked if it was his?

Reply.—It was.

Question.—When were you first apprehended?

Reply.—Last Monday.

Question.—When were you despatched to the station?

Reply.—Yesterday.

Question.—Has any coercion been used to make you confess?

Reply.—Prior to the confession, the *bukundauz* had warned me to tell the truth.

The confession of Kishore Mahomed before the magistrate was:

One day in *Jeyt* last—what date I cannot say—at four or six *dunds* of the night, I was about to sleep, when Menjan, the brother of the wife of my younger brother, requested me to accompany him to his house. I agreed to it and was going

there in company with Meajan, when we met Sulleem and Charu *Beparee*, who said to Meajan that his brother had returned home and had fallen down senseless, and had sent him word to go home quickly. We four men then went together to Meajan's house, but we did not find his brother there. We next proceeded to the house of Sulleem, which adjoins that of Meajan, and found his (Meajan's) brother Boodhye sitting in the court-yard (*oothan*) surrounded by the females of the house, and Sheikh Haneef sitting by him. On inquiry, Boodhye said that Shurwal Khan was caught and taken away by his wife's brothers, Durazoollah and Feloo Meera, and others, on seeing which he (Boodhye) came running off and had lost his presence of mind. He also said that Imteaz Alee knew where Shurwal Khan was taken. On this we went to Imteaz Alee at Jalukatee *bunder* and inquired of him about Shurwal Khan, when Imteaz said that Shurwal Khan was murdered by Durazoollah and Feloo Meera. We asked him where the body was. He said, "Come and I will show you." We then, in company with Imteaz, came back the very night, and on proceeding to the *huceta* of Hubeeboolla, West of Meajan's house, found the body lying in a *jungle* with a wound on the head. I guessed that the wound was caused by a blow with a club and that the head bone was broken thereby. I then desired Meajan to inform the police of the occurrence, but he refused to do so, saying that as the body was found close to his house, his female relations would be conveyed to the *thannah* in case the police were made acquainted with the affair. Imteaz, Boodhye and Meajan then took the body away and threw it in Gorudam *Khal*, but I did not accompany them on this occasion. I am a stranger and I did not reveal the circumstances to any one from fear of evil consequences. I now hear that Durazoollah had an attachment for Shurwal Khan's wife, and that Duraz murdered Shurwal Khan. They both live in the same *baree*. Durazoollah is not brother to the wife of Shurwal Khan, but Feloo Meera is her brother. I do not know when and where the murder took place.

With respect to all these confessions, it will suffice to say generally, that though the *soujdaree* confessions of each of the prisoners are not in all respects similar to those given in the mofussil, there is nothing in the one which directly contradicts any thing in the other, nor is any fact mentioned by one of the prisoners at variance with any thing contained in the confessions of the rest. All the confessions are not equally full, nor are all the matters given in detail at the *thannah*, repeated again in the same order before the magistrate; but taking the confessions together, they seem to me to be the

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voluntary admissions of the parties, so far as they chose to reveal the real facts, on each occasion of their examination.

At the sessions, the prisoners one and all denied the charge and pleaded that the case was a got-up one, by the witnesses and the police, the former out of ill-will, the latter for their own credit. All but Feloo named witnesses, but nothing to their advantage was deposed to by any of them.

The witnesses in support of the circumstantial evidence, I do not place much reliance upon, nor do I think that any particular weight ought to be given to the testimony of Torab and Charoo. By their own admissions, they are almost as guilty as Meijau and Kishore Mahomed, and the whole tenor of their statement, added to one or two contradictions in regard to material facts, leads me to think that they took a more direct part in the removal of the body than being merely unconcerned spectators. Indeed, there can be little doubt that it was known generally throughout the village, almost as soon as it happened, that some foul deed had happened to Shurwal. As evidence then against others, the depositions of such persons should be received with caution but as affording an index to the guilty parties, it may, and has, led to good service. It has led to the apprehension of those who have confessed the crime. The confessions have been well proved to have been the voluntary admissions of those who gave them. There was no unnecessary delay at the *thannah*, so as to induce a suspicion that the parties were tampered with, and five out of the six prisoners adhered to their infussil confessions before the magistrate. From the very first rumour of the affair, the prisoners' names have been connected with the murder; four of them came in to state what they knew of it with Naemooddeen, when he appeared in person before the magistrate. That they had some knowledge of the matter is proved by this circumstance, and though they now all deny that they came into the station with Naemooddeen they are evidently denying a real fact. It is not likely that Naemooddeen would say that his witnesses were present and that he would pray that they might be examined, had they not been in company with him at the time. There is therefore no doubt that they did attend the magistrate's court, on the occasion referred to, and the motive for their so doing is plain, as with the knowledge of their own guilt they could not fail to see that it would be more prudent to reveal so much of their own participation in the affair, as would bring home the guilt to another, than run the risk of being put upon their defence by refusing to aid the complainant with such information as he knew them to possess.

Different motives seem to have influenced the different prisoners in the part they took. *Shurwal* contracted two

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marriages, the first with the prosecutrix whom he seems to have no affection for, and the second with the sister of Naemood-deen. It would seem further that he had attachments for two other women, one the sister of Boodhyé and the other the sister of Ashuk *Chowkeedar*. Duraz is said to have been nearly related to the first wife, for whom, some say, he had himself a partiality, and something connected with this subject probably led him to contrive, or to join in the plan of the murder. Boodhyé is brother to Foolsun, with whom Shurwal had a secret attachment. Some fact arising out of this, probably made Boodhyé join in the transaction, while the relationship existing between him and Meajan and Kishore supplies the motive for the share they took in the affair; Shurwal was also a petty lender, and there is good ground for presuming that Imteaz, at least, if not some of the other prisoners, was a debtor of his. Whatever then the true secret might be, which actuated each prisoner, there was not wanting a motive to account for the conduct of each; and in this district the people are so regardless of life, that murderers are common upon less cause than the least of the above motives.

The prisoners, in their defence before the sessions, accuse the witnesses with conspiring to ruin them out of spite and ill-feeling, on account of some former quarrels. These quarrels were however of a petty nature, and often happen among relatives, (such as most of the parties are to each other), without leaving any lasting effects. They also complain of ill-usage from the police and the *talookdars*, whereby they were induced to confess; but their persons exhibited no traces of ill-usage; of intimidation there could be none before the magistrate, and I have above explained why I regard the confessions as evidence worthy of reliance.

The *fulta* of the law officer finds prisoners Nos. 11 and 12, guilty of culpable homicide of Shurwal Khan; Nos. 13 and 14 of concealing the circumstances of the case by throwing the body into the *khal* on legal proof, and of being accomplices in the murder of Shurwal Khan on violent presumption; and Nos. 15 and 16, guilty only of concealment of the case, and declares all the prisoners liable to discretionary punishment by *tazeer*.

In this finding, I somewhat differ.

Regarding each prisoner guilty to the extent admitted by himself, and entertaining no doubt that the actual death of Shurwal Khan has been accomplished by the agency of the prisoners, I would convict Durazoollah and Feloo Meera as principals, Imteaz and Boodhyé as accomplices, and Meajan and Kishore Mahomed as accessories after the fact, in

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the wilful murder of Shurwal Khan. But as the body has not been found, and as, however improbable, it is not beyond human possibility, that Shurwal Khan may yet be alive, I would not recommend an irrevocable judgment, but would sentence the prisoners Nos. 11 and 12 to imprisonment for life, Nos. 13 and 14 to fourteen (14) years' imprisonment in banishment, and Nos. 15 and 16 to seven (7) years' imprisonment in the zillah jail.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. R. Colvin.)—The sessions judge has given a very full account of the circumstances of this murder. The deceased Shurwal, it was alleged, had formed an intimacy with Musst. Foolsun, sister of the prisoner No. 14, Boohyc, with whom the prisoners Nos. 15 and 16 are related. The prisoner No. 11, Durazoollah, had also an intrigue, as stated by some of the witnesses, with the prosecutrix Musst. Ayshun, the widow of the deceased. She herself denies the fact, but admits that some proposals were made to her by the said prisoner. The other prisoners Nos. 12 and 13, Feloo and Imteaz, were, it seems, indebted to the deceased who was in the habit of lending small sums of money.

There can, we think, be no such doubt, as the sessions judge seems to entertain of the death of Shurwal. The corpse was not found, but the prisoners, not only in their mofussil confessions, but in those made by some of them before the magistrate, distinctly admit that Shurwal was killed, and that his corpse was carried off in a basket and thrown into the river.

The evidence of the two witnesses, Torab and Charoo, is, we observe, supported by the voluntary confessions of several of the prisoners, and is therefore entitled to credit, so far as it affects the prisoners, although those two witnesses may have concealed the exact extent of their own connexion with the case. The prisoners Nos. 11 and 12 were apprehended, on information given by the prisoner No. 13 ; No. 11 confessed to having joined with No. 12 in the assault on the deceased, and produced from a jungle a chudder which he had on at the time of the murder. This chudder was recognized ; No. 12, before the magistrate, acknowledged his mofussil confession, and again admitted he held the hands of the deceased when he was killed. Nos. 13, 14 and 15, before the magistrate, state they were present, but evade, as far as possible, the admission of direct participation. No. 16, in the same court, confessed to having gone part of the way with the corpse, but denied his mofussil confession.

The defence set up by the prisoners is as usual *alibi*, but the witnesses say nothing in their favor.

Upon full consideration of the papers of the record, we see no reason to interfere with the conviction of the prisoners, or

with the sentence proposed by the sessions judge to be passed upon them.

PRESENT :
J. DUNBAR, Esq., Judge.

MUSST. AMEERUN AND GOVERNMENT

versus
FUCEERA.

CRIME CHARGED.—Wilful murder of Musst. Nuseebun, a girl, daughter of Musst. Ameerun.

Committing Officer.—Mr. J. T. Worsley, deputy magistrate of Sasseearam.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 15th August 1853.

Remarks by the sessions judge.—The prisoner is convicted, on strong and conclusive circumstantial evidence, of having, while excited by intoxication, cut the throat of his own child, an infant of ten months old, with a knife.

The prosecutrix (the child's mother) states, that she was at Shah Kuberoodeen's stables (her husband being a syce in that person's service); that some one came and told her that her child had been murdered; she ran home and found the child with its throat cut, and the prisoner standing by. She taxed him with the deed. He confessed it, and begged her to pardon and save him.

The evidence of two witnesses (Nos. 1 and 2) is, that they, with the prisoner, had been drinking together in the evening of the murder, and that the prisoner became excited by the liquor and lavished indiscriminate abuse upon things and persons; that they afterwards separated, the two witnesses going to the house of witness No. 5, while the prisoner went to his own house, which adjoins that in which they were. While seated, they again heard the prisoner's voice in anger, and after a short time they heard a voice as of some one was being throttled. They went immediately across to the prisoner's house. As they came in, the prisoner ran away, and they then saw the poor child lying in a *charpoy* in the court-yard, with its throat cut from ear to ear.

Suspecting that the prisoner had perpetrated the deed, they went and informed their master, Shah Kuberoodeen, who ordered the prisoner to be apprehended.

When the witnesses came back to his house, they saw his wife (or rather mistress,) the mother of the child, and the prisoner, and heard the latter, on being charged by her with the deed, admit the crime and entreat her to save him.

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Prisoner convicted of the wilful murder of his child when excited by drink, recommended by the sessions judge for capital sentence. The presiding judge considering that intoxication had in previous cases been allowed to bar capital punishment, sentenced the prisoner to transportation for life.

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Other witnesses confirm the fact of this conversation.

The prisoner was then apprehended, his clothes were found stained with blood, and the next day the police discovered a bloody knife thrust into a *tattee* in his house.

This knife was satisfactorily identified as the property of the prisoner.

The native assistant surgeon, stationed at Sasseram, deposes to the wound and the fact of death being caused thereby, and states that the instrument produced was fitted to cause such a wound.

The prisoner pleads *not guilty*, but sets up no defence, and offers no evidence, merely stating he was intoxicated and does not know who killed his child.

The *futwa* declares the crime of wilful murder proved, but *kissas* barred on account of the relationship between the prisoner and the deceased.

A second *futwa* declares that but for this impediment, *kissas* would be incurred.

The plea of intoxication, such as it is, is the only point to be considered in regard to the sentence to be recommended.

However, it may be held in principle, that intoxication is not to be regarded as a ground for mitigation of punishment. I apprehend that in practice it is generally allowed some weight, and I much doubt whether any legal principle, however sound in theory, would ever prevent the unvaried conviction that a crime is deprived of some portion of its criminality, when the state of the criminal's mind is such as to deprive him of reason.

In this case, however, I do not consider that the prisoner is shown to have been in such a state of intoxication as to be incapable of exercising his judgment : on the contrary, though *excited*, he appears to have had his senses fully about him. The effectual and complete mode in which he accomplished his horrid purpose, the prudence which he evinced in running off when the witnesses approached, and his conversation with the prosecutrix, all tend to support this supposition.

His intoxication can, therefore, only be regarded as a stimulus, which called into play his brutal and savage nature, without obscuring his perceptions.

I accordingly recommend that the prisoner be sentenced to death.

Remarks by the Nizamut Adawlut.—Present : Mr. J. Dunbar.)—Intoxication cannot certainly, in all cases, be regarded as an admissible plea for mitigation of punishment, for it not unfrequently happens that intoxication is resorted to for the very purpose of enabling the criminal to carry out his pre-meditated design ; but intoxication has, in many instances, been allowed to bar capital punishment, where it was clear that no previous

enmity existed. Although in this case no one saw the murder committed, yet the circumstantial evidence is so strong as to leave no reasonable doubt upon this point. I concur therefore in the conviction, but believing that the prisoner would not have killed the child when sober, and with reference to the precedents in the cases of Sheikh Saadut and Gunga Aheer, recorded in the published Reports of Cases tried in this Court, the former at page 157 of volume I. and the latter at page 6, volume III., I sentence him to imprisonment for life in transportation beyond sea.

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PRESENT:
J. R. COLVIN, Esq., Judge.

GOVERNMENT

*versus***BHARUT SHAH.****CRIME CHARGED.**—Wilful murder of Comul Shah.

Committing Officer—Baboo Gopal Lal Mitter, deputy magistrate of Nattore.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahiye, on the 29th August 1853.

Remarks by the sessions judge.—The reference is unavoidable, as the *futwa* convicts the prisoner of being an accomplice in murder and liable to *akoobut*.

It is an aggravated case of murder, and the whole proof rests on the deposition of a boy and the confession of the prisoner in the mofussil, but the circumstantial evidence is very strong, and would, but for the confession and the fact of two being concerned, have warranted a conviction of the prisoner alone of the murder.

The facts were as follow:—The deceased's daughter was married to the prisoner's elder brother, who, with another brother, sometime after the marriage, *all* lived together in the same homestead with the deceased.

The married brother, however, suspecting an adulterous intercourse between his mother-in-law and the prisoner, turned both him and his other brother out of the house. Shortly after the woman was confined, and when the murder was committed, the child could not have been more than three months old, if so much. At this time, for what reason was not apparent, the deceased slept in the verandah, before the room occupied by his wife and child, and on the night of the 4th *Cheyt*, she and her son-in-law were disturbed, and awoke on hearing the deceased call out, "I am being killed." Both immediately

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 wilful murder,
 and sentenced
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went to the deceased and found him covered with wounds, one of his eyes having been put out and there was a severe cut across the bridge of his nose. The deceased said the wounds had been inflicted by Bharut Shah, and both the prisoner's brother and deceased's wife understood him to allude to the prisoner, as there was no other Bharut Shah.

Witnesses, numbered 10, 11, 15, 16, also saw the deceased immediately after he was wounded and heard him accuse Bharut Shah of wounding him, and by Bharut Shah they understood him to mean the prisoner.

The boy Edoo, (the last witness examined for the prosecution,) a sharp intelligent lad, and who gave his evidence in a straightforward way, and on whose testimony I place perfect reliance, deposed that he was sleeping in the *verandah* near the deceased, when he was seized by Nundoo Shah (the prisoner's brother,) and the prisoner he saw cutting at the deceased with a *hunnavah* or sickle. Nundoo then rolled him up in the *chuttee*, or sacking he had pulled over him as a coverlid, and held him down. He heard the deceased call out to Bhyrub and Muttoor to come ; he was sleeping only half a cubit from the deceased.

The prisoner put no question to this witness, nor to the other witnesses for the prosecution.

I now come to his confession in the mofussil, made on the 18th March, two days after the murder. This of course will be read. In it the prisoner admits going with another person (named) to the house of the deceased ; and while he kept the boy Edoo down with the *chuttee*, the other person, with a knife, began to cut the deceased, and on the latter calling out he fled.

It is evident from this confession, that it was a pre-concerted thing between the prisoner and some other person to murder the deceased. The accomplice was to kill him, while he (prisoner) held the boy Edoo, and who *they knew* slept near the deceased.

The prisoner denied the confession, but that he did make it of his own free-will and accord was fully proved by *two* out of the *three* witnesses examined, and who had been the attesting witnesses. The third, Anund Sircar, however, deposed that the darogah told the prisoner, that if he accused Sirtage of the murder, it would be well for him, or to his advantage.

The first two witnesses (Nos. 7 and 8) were then recalled and questioned on this point, in the presence of witness No. 9, and both declared they never heard the darogah say anything of the kind to the prisoner. The darogah, the *soujdaree omlah* informed me, is dead, and I think his making any such remark most improbable. The confession was read over to the

prisoner *after* it was taken down, and he assented to its correctness; and that it was a genuine confession, is fully borne out by the facts of the case, *viz.*, the attack made on the deceased and the seizure of the boy Edoo. The only doubtful part is, as to the person by whom deceased was wounded and who was the accomplice. It is very rare that a prisoner confesses that the deed was done with his own *hand*, and there were obvious reasons for his not saying or concealing the fact that Nundoo Shah was his accomplice.

To satisfy myself, I examined the witnesses numbered 10, 11, 12, 13 and 15 again, (after filing the confession on the record) to any bad feeling existing between Sirtage and the deceased, but they knew of no quarrel or enmity between them. Now, as there was both a quarrel and enmity between the prisoner and deceased, it was highly improbable that the accomplice, on such an occasion, would be put forward or *persuaded* to undertake the chief part, or to murder the deceased while the prisoner merely held down the boy.

From the inquest on the body, it would appear the deceased was covered with wounds about the face and head, and though none were given in any mortal place, there can be no doubt the deceased's death, which took place before morning, was caused by the loss of blood or *haemorrhage* that could not be stopped. Want of nerve in the hand that dealt the blows, or bluntness in the weapon used, were probably the reasons why the assassin failed to kill his victim on the spot. It should, however, be added, that the deceased at the time was in a bad state of health. One witness saying he had the *asthma*, another *dropsy* (shote,) and the third that he was ill, but what was the nature of his illness he could not say.

The prisoner's defence was, that he was at home the whole night, and that he had been ill-treated by the police.

The witnesses to ill-treatment only spoke to his being bound in the way, that persons charged with murder usually are, and that he was guarded. Four other witnesses deposed to seeing the prisoner at the zemindar's *cutcherry* on the night of the occurrence. The prisoner lived close to the *cutcherry*. It was not therefore proved that he was *at home all the night*.

In the calendar his brother Nundoo Shah's name was entered, to prove he went out at night and did not return for sometime, but as this brother was also named by the boy Edoo, I did not think it advisable to take his evidence, as very little reliance could be put on any statement he made.

The *futwa* convicts the prisoner of being an accomplice and aiding and abetting in the murder of Comul Shah. To this finding I do not dissent, though the more correct one

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would have been to declare he was an accessory before the fact, and aiding and abetting in the murder.

It is proved, if entire reliance can be put on the evidence of deceased's wife, that the prisoner told her he would kill the deceased. In his mofussil confession, he distinctly stated, that he and another person had planned his death, and how it was to be accomplished.

This is proof of his being an accessory before the fact.

It is fully proved, by the evidence of the boy Edoo, that he saw the prisoner cutting the deceased, whether with a *huns-wah* or knife does not much matter, and at night it would be difficult for any one to describe the instrument used, if used against the *deponent* himself. In his mofussil confession, the prisoner stated that he held the boy Edoo down, while the accomplice, with a knife, cut the deceased and when the latter called out, he ran away.

This is proof at least of aiding and abetting, if not of the graver offence of murdering the deceased with his own hand.

Now for the circumstantial evidence.

The prisoner's *own* brother deposed to turning him out of the deceased's house, on account of his having an adulterous intercourse with his wife's mother, the deceased's wife.

The prisoner, in his confession, admits this and to his then going to Muttoor Shah's house, when it may be inferred he was again turned out for attempting to have a *liaison* with his concubine. All this he himself voluntarily informed the police of, after he was arrested on a charge of murdering the deceased.

I now come to what may hardly be admissible as evidence, but which is so often used as a clue to it, and the detection of the offender, that weighing the statement with the facts, I do not see how it can be set aside as nothing.

I speak of the deceased so immediately after saying that the prisoner had inflicted the wounds he had on his person. That he thought he was dying, or should *not* survive, is only proved by witness No. 11. Now a dying man cannot have much breath to spare, and because he does not tell every one that he is dying or *cannot live*, are we altogether to reject his complaint, made when alive, that such a person wounded him?

It should be borne in mind, that one of the parties to whom he complained, witness No. 15, was the chowkeedar of the village, and that the accused afterwards confessed to a superior police officer, that he was present when deceased was wounded by an accomplice, thus in a manner confirming the deceased's statement of the prisoner being *then and there* present.

Having now detailed all the circumstances of the case, it only remains for me to suggest what sentence should be passed,

and I hope I am not carried away by the enormity of the offence ; for of all the numerous cases of murder in prosecution of adultery by the *paramour* reported, I can find none parallel to the present one, intriguing with his sister-in-law's mother, or the mother-in-law of his brother.

I never, to the best of my recollection, recommended a capital sentence. In the case of the prisoner, I think, a less severe sentence than imprisonment in transportation for life should not be awarded.

I entirely acquit the wife of privy to the murderer, though there can be no doubt her depravity of conduct, and a hope to have easier access to her, instigated the prisoner to join in the plot to murder her husband. I had first supposed, that the evidence would establish an assignation between them, and that the deceased had met his death in a struggle, either to prevent the prisoner entering his wife's room, or in the endeavour to detain him when quitting it ; but there is nothing to support either of those not unusual occurrences in cases of this kind, and if there had been evidence to that effect, it could not have been admitted as a justification.

If there is any doubt, the prisoner will be sure to have the benefit of that doubt given him by the Court, in whose hands I now beg to leave the case.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin.)—The reliable evidence in this case appears to me to be in the mofussil confession, (in so far as it admits the connexion of the prisoner with the killing of Comul Shah,) corroborated as that is by the well-proved fact that the deceased Comul Shah, mentioned the prisoner as the person by whom he had been wounded, immediately after the attack upon him, to all the neighbours who came up on the alarm being given.

I cannot join with the sessions judge in giving much weight to the evidence of the lad Edoo. It is remarkable that nothing is said of this lad having been sleeping near the deceased, and being aware of any of the facts of the assault on him, in the first complaint made at the thannah by the prisoner, who lived, and had slept that night, in the same house with the deceased ; nor do the witnesses, Nos. 10, 11 and 15, the neighbours who assembled on the alarm, say any thing of Edoo. He is only brought forward in the police report of the *day after* the arrival of the thannah mohurir on the spot.

It is very probable that the statement of Edoo was suggested by the woman Pritima, to conceal the fact that the prisoner was coming to her at the time that her husband met his death.

The nature and appearance of the wounds strongly supports the truth of the first statement made at the thannah, that the

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deceased had seized the prisoner as he was going at night into the room where Pritima was sleeping ; that a struggle took place between them, in which the deceased received a number of scratches and other cuts with a knife across the face and arms, and that the prisoner then effected his escape.

Death caused by wounds inflicted under such circumstances is murder, but of a less atrocious character than if it had been caused by an attack made for the purpose of destroying the deceased.

Had an offence of the last-named character been held by me to be established, I could not have recommended a sentence less than capital.

Under the facts proved, I sentence the prisoner to transportation for life.

PRESENT :

J. DUNBAR, Esq., Judge.

ATMAH SINGH AND GOVERNMENT

versus

TEERBHOWUN SINGH CALLING HIMSELF BHOWUN SINGH.

SHAHABAD.

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CRIME CHARGED.—With being an accomplice in the severe wounding of Atmah Singh.

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Case of
TEERBHO-
WUN SINGH
calling himself
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SINGH.

CRIME ESTABLISHED.—With being an accomplice in the severe wounding of Atmah Singh.

Committing Officer.—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 19th April 1853.

Remarks by the sessions judge.—The circumstances of this case were thus described in the Monthly Statement No. 6, for November 1848 :—

" The prosecutor had gone out to ease himself, on Thursday evening the 21st September, when he saw two individuals helping themselves to some tank water for the purpose of irrigating their fields ; knowing that this tank was the joint property of sundry other *putteedars*, the prosecutor forbade their so doing without their consent, upon which a row commenced and the prisoner inflicted (at the instigation of another individual not before the court) a desperately severe blow with a *gurrasa* on the left elbow-joint of the prosecutor's arm, which penetrating the bone, and which will, in all probability, disable the poor fellow for life. He was for upwards of a month in hospital, and at one time in danger of his life.

Prisoner convicted as an accomplice in severe wounding, and sentenced to five years' imprisonment. Appeal rejected.

"The wounding was distinctly witnessed by three individuals, who have given evidence in this court, and the inquest paper details the cut to have been eight fingers long by four wide and two deep.

"The prisoner pleads *not guilty*, as well as ignorance as to how or by whom the wound was inflicted, urging that it must have been received in a general *m  le*, brought about by an attempt to rescue a certain individual whom he (the prisoner) had apprehended in the act of stealing one of his own cattle, the thief being a retainer of the prosecutor.

"The evidence for the defence, however, was unable to substantiate any thing exculpatory of the prisoner's guilt, the witnesses being entirely ignorant of days and dates."

The prisoner before the court is proved to have been present aiding and abetting in the assault, which was a very savage and brutal one.

He pleads an *alibi*, but the plea is by no means proved; the assessors return a verdict of guilty, the witnesses depose that the prisoner, who is the *elder* brother of the man formerly sentenced, gave the order to strike the prosecutor, though he did not actually do so himself.

I hold him, therefore, equally culpable with the man who struck the blow, and sentence him to the same punishment.

Sentence passed by the lower court.—To be imprisoned with labor and irons for five (5) years from the 19th April 1853.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner, in his petition of appeal, asserts that his name is Bhowun Singh, whereas the evidence points to one Teerbhowun Singh. It is likely enough that he made a change in his name with a view to avoid detection, but in his defence he took no exception on the score of identity, and pleaded merely an *alibi*, which he could not substantiate. The conviction is good and I confirm the sentence.

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Case of
TEERBHO-
WUN SINGH
calling himself
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PRESENT:

SIR R. BARLOW, BART.,
 AND
 J. R. COLVIN, Esq., } *Judges.*

GOVERNMENT AND ZUMEEROODDEEN

versus

SOOLTAN BHUEEMYA.

BACKER-GUNGE. CRIME CHARGED.—Wilful murder of Pauchowree on the 25th July 1853.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 13th August 1853.

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 Case of
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Prisoner
 convicted of
 the wilful
 murder of a
 man with
 whose wife he
 had an
 intrigue.
 Sentenced to
 be hung.

Remarks by the sessions judge.—The evidence establishes that the deceased and his wife had a quarrel, the evening before the murder, because of a too great intimacy between the wife and the prisoner Sooltan. While the quarrel between the husband and wife was going on, the paramour from the opposite side of a *khal* put in his voice, in defence of the chastity of the wife, on which the deceased greatly abused him; and having also struck his wife a hard blow with a split bamboo, she walked off in an angry mood to the house of a relative of hers, living some distance off. That night the husband slept alone in the house. At about 12 o'clock, or a little after, the witness Roostom, who was asleep on a raised *muchan* upon his own fields, was woken by the cries of the deceased, that some one was murdering him. The witness having first hastily called out to a neighbour to come and see what was happening, ran to the house of the deceased. As he was about to enter the house from which the cries proceeded, the prisoner sallied out, and jumping from the verandah on to the ground, made off as fast as he could. The moon was shining and the witness Roostom did perfectly distinguish him to be the prisoner: he also followed him till he got to the *khal* into which the prisoner threw himself, and the witness went no further; but he then and there called out to Bucktar, (witness No. 7,) that the prisoner had just crossed the *khal* after having killed the deceased.

As the prisoner had escaped him, the witness Roostom went back quickly to the help of the deceased. When he got there, he found the witness No. 5, Ameeroodden (the neighbour whom he had called up) and No. 4, Imamooddeen, and No. 6, Ibrahim. On a light being procured, they found that the deceased had received eleven or twelve severe wounds

on the shoulders and the chest, from most of which blood was issuing profusely. Endeavours were made to stop the bleeding, but to no purpose. The deceased was only able to say that the prisoner Sooltan was the murderer, and soon after he died from loss of blood.

As soon as life was extinct the witness Roostom went to the house of the witness Kummer Aleo (No. 10) and Fazood-deen (not in the calendar,) and calling them up, took them with him in search of Sooltan. They did not find him at his house, and they were told by his mother that he had gone to Usgur Chowkeedar's house to hear some singing. The next morning as Roostom was away in search of the wife, she herself arrived, and seeing what had happened, she called Usgur Chowkeedar, and the two together went and informed the police. The evidence of the persons named in Roostom's account was then taken, when Sooltan was apprehended, and sent in together with all the parties.

The information, which the widow of the deceased gave at the thannah, was silent as to the proof that she knew was forthcoming against Sooltan, but when it is recollectcd, that it was her paramour against whom she was giving unwilling evidence, it will not create surprise, that she suppressed as much of the facts as went to criminate Sooltan, as she possibly could.

On the trial at the sessions, Roostom's important evidence was corroborated in all its parts by the parties referred to in it.

The prisoner denied the charge, and in a petition accused the police and the zemindar's amlah with manufacturing false evidence against him.

The *futwa* of the law officer convicts the prisoner of the murder charged, on strong presumption, and declares him liable to the punishment of *akoobut*.

In this conviction I quite concur. I place reliance on the evidence of Roostom; his account is consistent in itself, it tallies with, and is supported by, the evidence of all the other witnesses, and agrees with the inferences arising from the probability of facts. The nature of the wounds on the person of the deceased make it probable, that when first attacked, and all the time the attack was going on, he screamed to the top of his voice. The probability is, that the deceased struggled to avoid the blows, and the number inflicted further shows, that the murderer was some time in the house. That the prisoner was still in the house, engaged in his murderous project, or just completing it when Roostom arrived, is quite in accordance with the circumstances. That he should distinguish him, being close to him and the moon shining, is very likely, and that he did do so, is proved from his having told Bucktar so at the

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very moment when he saw further pursuit was hopeless and he gave up the pursuit. The wounds were severe and produced death very quickly, but from the endeavours made to stop the effusion of blood, it is evident that life had not departed; and from the situation of the wounds and from the head being free from injury, the probability is, that the deceased was able to speak, and if so, it was natural, if he said anything, that he would say the name of his assailant. That the witnesses agree in saying that he said so little, is a mark of the goodness of their evidence. That he was able to say who had committed the deed, is very probable; but with the quantity of blood which must naturally have issued from twelve much severe wounds, it would have been proof of falsehood had the witnesses said that the deceased spoke more than he is represented to have done. This kind of test is, I think, the very best and almost infallible with native witnesses, for totally ignorant as they are of physical subjects, they invariably fail, when inventing a story, to make it consistent with nature. The conduct of all the parties bears evidence that it was known, from the very beginning, that Sooltan was the murderer. His defence first was, that he was absent about two *ghurries* off, but the parties with whom he is said to have passed the night, say he was not with them after evening. His unaccountable absence from his own home on the night of the occurrence, adds therefore to the evidence, already weighty against him.

The evidence does, in my opinion, fully establish the guilt of the prisoner. His fondness for the wife was no doubt the motive which excited him to commit the murder. The circumstances of the case evincing a deliberate intention to take life, I am compelled to say, that I see nothing in the prisoner's favor to exempt him from the extreme penalty of the law. I recommend him to be hanged.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. R. Colvin.)—The evidence of the witness Roostom who, on hearing the cries of Pauchcowree, went to his assistance, and as he entered the house, met and recognised the prisoner Sooltan rushing out of it, whom he followed to a nullah into which he plunged; the fact that, as prisoner so made his escape, this witness cried out the prisoner's name to Burktae, a neighbour, and that he also named the prisoner to Ameerooddeen, Imamooddeen and Ibrahim on the spot, and the circumstance that the deceased, on the point of death, named the prisoner to all the above witnesses, and the consistent statements which they have made throughout, opposed only to the prisoner's plea of *not guilty*, prove to our satisfaction, in concurrence with the opinion of the sessions judge, that the prisoner committed the murder with which he is charged.

We concur also with the sessions judge in thinking, that nothing is brought forward in the prisoner's favor which can exempt him from the extreme penalty of the law for so deliberate a murder. We therefore sentence him to death.

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Case of
SOULTAN
BHUREMYA.

PRESENT:

J. DUNBAR, Esq., Judge.

AND

H. T. RAIKES, Esq., Officiating Judge.

GOVERNMENT ON THE PROSECUTION OF FUTTIK
CHUNG MUNDUL

versus

GOUR CHUNDER ROY (No. 1,) SHEIKH ZUMMEER-OODDEEN (No. 2,) HYDER MAHOMED (No. 3,) KUMLAKANT KOOND (No. 4,) SUDDASHEEB KOOND (No. 6,) HURRISH CHUNDER ROY BONEEK (No. 7,) AND AINOODDEEN ALIAS FUKEER MEAH (No. 12.)

CRIME CHARGED.—1st count, riotously, in an armed body, attacking the house of Nubbo Doorgah Dasea, the mistress of the prosecutor Futtik, plundering property and severely wounding the said Futtik, and 2nd count, riotously, in an armed body, attacking the house of Nubbo Doorgah Dasea, the mistress of the prosecutor Futtik, and severely wounding the said prosecutor.

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Case of
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Case of riot and plunder referred to the Court, the judge being in favor of acquittal and differing from the law officer's *futwa*. Held that the case was exaggerated, but that a conviction was correct.

Committing Officers.—Mr. T. B. Mactier, joint-magistrate, and Mr. A. J. Jackson, officiating joint-magistrate of Furreedpore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Dacca, on the 2nd August 1853.

Remarks by the officiating sessions judge.—The circumstances stated by the prosecutor are briefly that he is a servant of one Nubbo Doorgah Dasea; that the prisoner No. 12, Ainoodeen alias Fuken Meah, was desirous of possessing himself of some of her wealth; failing in this, he, with 100 or 150 armed men, amongst whom the prosecutor names all the prisoners, but one, *viz.*, the prisoner Sumbhoonath Koond, (No. 5,) attacked the house of Nubbo Doorgah Dasea in the village of Saltha, on the afternoon of the 2nd February last; that when the prosecutor opposed their forcible entry, the prisoner No. 2, Zummeerodden, by order of four of the principal rioters, struck him on the foot slightly with an *oorah* a pointed betel stick, and one Asgur, (not apprehended,) struck him with a spear, which, penetrating the flesh at his side, came out near

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the back-bone ; that he then fell and remained senseless till the following morning, when he saw signs of the plunder which had been committed, and heard from Bogeemunt Shah, that ornaments and cash had been taken from a chest, the cover of which he saw broken ; but he would give no information as to who were the inmates of the house at the time of this occurrence. The witnesses speak much to the same effect, but only one of them, Sumbhoonath Shah, is a resident at the house said to have been thus attacked ; the others belong to the village, but are of no respectability, neither of a class whose unsupported evidence can be received, except with great caution. There is contradiction in their testimony ; amongst other things, one deposes to seeing prisoners Nos. 7 and 4 bringing out, in their cloth, coin and something like jewels ; others, whose attention is declared by them to have been particularly directed to these prisoners, say they saw nothing in their hands, but generally that household utensils of sorts, and bundles were carried away by some of the rioters, names unknown. The witness Sumbhoonath Shah, who is a resident on the premises and a relation of Nubbo Doorgah Dasea (and of consequence much more interested in the matter,) does not testify to this point, saying that he ran off to the jungle from fear, when he saw prosecutor wounded ; and though he deposes to having seen the broken box, he declares his ignorance of its contents, nor can he satisfactorily explain why the jewels and ornaments of this lady should have been in a chest, which was kept in a compartment of the house devoted to the transaction of business, instead of an inner and more private apartment. One portion of this man's evidence is as much opposed to that given by others, as it is to probability, viz., where he states that the rioters brought two bundles of *oorahs*, containing forty each, and apportioned them out amongst themselves in front of the house. The absence of the gomashta, Bogeemunt Shah, and of the evidence of Sheeboo, who, with Sumbhoonath, tended the wounded man ; of Teelook Shah, the brother of Sumboonath, stated by him to have started the night of the occurrence to give information to the police ; and of Gopee Shah, a nephew of Nubbo Doorgah, who resides on the premises, is not satisfactorily explained. The defence is partly made up of *alibi* and partly of counter-charges.

The *futwa* of the law officer convicts all the prisoners, but one, Sumbhoonath Koond, the ground for whose acquittal appears to be only that the prosecutor did not name him at the thannah, or before the magistrate ; but this argument, as far as the thannah deposition is concerned, applies equally to prisoner Gour Chunder Roy, whom the *futwa* has convicted on the strength of the evidence given at the trial ; and that is equally

condemnatory as far as it is credible of Sumbhoonath Koond. This prisoner has been released. I cannot agree in this conviction for the following reasons : -

From the report of the police, it appears, that one Bogeemunt Shah, on the part of Nubbo Doorgah Dasea, whose servant the prosecutor is, and one Mohesh Chunder Roy, on the part of Gour Chunder Roy, the prisoner No. 1, came to the thannah on the 23rd February 1853, corresponding with 13th Phagoon 1259, and at noon each deposed on oath, that the other with an armed band riotously attacked the house of deponent, &c., and plundered property to the amount of about rupees 800 and rupees 300 respectively. It may here be noticed, that Teehook Shah, mentioned above, is never alluded to as having appeared before the police.

The cause of quarrel between these parties is stated in evidence to be, that Gour Chunder Roy would not eat with Nubbo Doorgah Dasea, and that as he was an influential man of his class, in the village, others followed his example. No other valid reason for any misunderstanding is shown, and in this Ainoodeen *alias* Fukeer Meah, No. 12, and the other Mussulmans, could have had no concern. The reason why Gour Chunder Roy and others would not so partake of the other's meals is, with apparent reluctance, now allowed to ooze out, *viz.*, that the prosecutor, Futtik Chung, was suspected of improper connexion with one Suttabuttee, the sister-in-law of Nubbo Doorgah. Under these circumstances, I can easily understand that Nubbo Doorgah should be induced to fabricate a case against Gour Roy and others, who had become so obnoxious to her and her household ; but not a tittle of reason is shown why Gour Roy and others should have plundered her property.

It is remarkable that neither of the complainants at the thannah requests search to be made for this plundered property, which it was most reasonable to expect they would have done ; and Bogeemunt did not then name a single witness, nor does he appear to have been present at the alleged attack and plunder, neither is any mention made of the list of witnesses said to have been filed by him, except in the final report of the darogah : this looks very suspicious. The witnesses for the prosecution swear, of course, to the prisoners as the rioters ; but there is much in their testimony which is conflicting, and the whole of the circumstances of the case throws great probability on the story of the prosecutor. It is true, that he has a wound on his back, but it only pierced through the flesh, which is unlikely to have been the case in the heat of an onslaught of 100 men, such as is described. It is possible that the wound was self-inflicted. I do not consider the

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charge proved, and have strong suspicions that it has been got up to get rid of parties obnoxious to **Nubbo Doorgah Dasea**.

The story which the other party apparently desire to be believed, is the occurrence of a mutual affray, and this mode of defence they have adopted ; for nothing like an affray is established, under an impression, as it seems to me, that such a counter-charge was the best, probably, in their ignorance, the only mode of combating the charge brought against them. Reasons come out in the course of the trial why the Mussulmans should have been included ; there had been law-suits between **Nubbo Doorgah** and **Ainooddeen alias Fukeer Meah**, the prisoner No. 12 ; and it further appears, that one **Anwur** and **Newaz Chowdrees**, who are inimical to him, interested themselves in the matter. Furthermore, one of the prisoners, **Suddasheeb Koond**, if not others, was cited as a witness by **Moresh Chunder Roy** in his first deposition at the thannah.

Sumbhoonath Koond has already been acquitted, and I recommend the release of the remaining prisoners.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Raikes.)

MR. DUNBAR.—There is unquestionably a great deal of exaggeration in this case, and the probability is, that little or no property was carried off, but the evidence suffices to establish the fact of the assault upon **Futtik Chung**. I would convict of riot and wounding, and with reference to the information elicited in the mofussil inquiry, which showed that there had been a *fracas* between the partisans of **Nubbo Doorgah** on the one side and **Gour Chunder Roy** on the other, and to the fact that the defendants have been in attendance, (some of them in jail) for upwards of six months, I would sentence **Gour Chunder Roy**, **Fukeer Meah**, **Hurrischunder Roy**, and **Kumlakant Koond** to be imprisoned for six (6) months, with labor, commutable to a fine of rupees fifty (50) each, to be paid within fifteen (15) days, and **Zummeeroodeen**, **Hyder Mahomed** and **Suddasheeb Koond** to be imprisoned for three (3) months, with labor, commutable to a fine of rupees twenty-five (25) each payable in fifteen (15) days.

MR. RAIKES.—I concur in this view of the case. The prisoners accuse the opposite party of attacking them at the same time. Had the whole been a fabrication, as supposed by the sessions judge, the prisoners would not have been prepared with a cross charge to lay before the police when first accused by the prosecutor. I concur in the sentence proposed by Mr. Dunbar.

PRESENT :
J. DUNBAR, Esq., Judge.

BUNSEE SINGH

*versus*GOOLZAR (No. 3) AND MUSST. GOONJUREE
(No. 4.)CRIME CHARGED.—Wilful murder of Musst. Runeeah Chok-
ree, for the sake of her ornamentsCommitting Officer—Mr. F. Tucker, magistrate of Chum-
parun.Tried before Mr. R. Forbes, sessions judge of Tirhoot, on
the 25th September 1853.Remarks by the sessions judge.—I refer this case for the or-
ders of the superior Court, not on account of a difference of
opinion between my law officer and myself, as to the guilt or
degree of guilt of the arraigned, but because the crime, of
which we concur in finding both the prisoners *guilty*, takes the
passing of the final order out of the legal competence of this
court.

The prisoners, who are husband and wife, of the sweeper
caste, were indicted for the wilful murder of Musst. Ru-
neeah, the daughter of the prosecutor, aged about six years, for
the sake of her ornaments; and the home of the female pri-
soner being close to the dwelling of the prosecutor in mouzah
Choachain, she was often employed in the house of the latter
as a sweeper, from which circumstance the child used frequent-
ly to be with her. The prosecutor alleges that about 6 A. M.
of the day on which the child was made away with, which was
Saturday, the 19th July last, or 18th Assar 1260 F. S., Musst.
Runeeah was playing in front of his door, when the females
of the family having gone to seek the child, in order that she
might partake of the food remaining from the previous day,
could not find her. The prosecutor himself had gone out
on some business, but coming home about 8 o'clock, was in-
formed that the child was missing. Upon this he proceeded
towards the East of the village to look for her, and, in the
way, he fell in with Jankee (witness No. 9,) who, on the pro-
secutor's questioning him, said that he had seen Goonjuree,
the female prisoner, taking the child away that morning in
an easterly direction. On this, both the prosecutor and
witness proceeded in that direction towards some lowland,
where they met the witnesses "Sadnsee and Boojungee" (Nos.
7 and 8,) who were employed in their fields, and on the pro-
secutor's asking them if they had seen the child, they answer-
ed that they had observed the two prisoners taking the child to

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Two prison-
ers, a man and
a woman, con-
victed of the
murder of a
child for the
sake of its or-
naments, and
sentenced the
man to trans-
portation and
the woman to
imprisonment
for life.

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JUREE.

the lowland, and on their (the prisoners') reaching a ditch, they (the witnesses) lost sight of the prisoners, whom, however, they afterwards saw returning from the lowland without the child. The prosecutor and those three persons then proceeded to the house of the prisoner 'Goonjuree,' and on their encouragingly asking her about the child, she stated in their presence, and in that of the witnesses, Jugroop Singh (No. 13,) Hurkhee Gorait (No. 14,) Kasee Singh (No. 15,) Gunesh Chowkeedar (No. 16) and Ramdharee Singh (No. 17,) that her husband had killed the child, and she agreed to go and point out where the body was. Upon this, the prosecutor and all the above persons proceeded with the prisoner to the aforesaid lowland, where she, in their presence, pointed out the spot, where the body had been buried, and whence also, in their presence, it was disinterred, the witnesses observing that there were no ornaments on it, and that on both sides of the deceased's neck there were marks of wounds with a knife and also a similar mark on the right cheek. Returning after this to the female prisoner's house, they demanded of her the jewels which the child used to wear, on which she, in the presence of the above persons, produced from a deserted house a silver *huslee* or necklace, two silver anklets, two silver earrings one gold nose-ring, which the child, when alive, used to wear, and which the prosecutor and witnesses identified as such. The prisoner also produced a knife, which she said was, the one with which her husband Goolzar had killed the child, and the male prisoner, who had come to his father-in-law's two days before, and was sitting in a tope, near the village, was at once secured.

The witness Jankee (No. 9.) deposes to having seen the female prisoner taking the child, on the morning of the day of the occurrence, in an easterly direction, and to his meeting the prosecutor and telling him so, to their proceeding together to the lowland and to their falling in with the witnesses 'Sadasee' and 'Bhoojungee,' who told them that they had seen the two prisoners take the child to the lowland and return without her, and to their all together afterwards going to the house of the female prisoner, who stated that her husband had killed the child. He likewise deposed to his accompanying the prosecutor and other witnesses to the spot, where Musst. Goonjuree pointed out the body, whence too it was exhumed, and to the prisoner's afterwards surrendering the child's ornaments, which were identified by the prosecutor and witnesses, the prisoner having also produced the knife, with which she said that the murderous deed had been committed.

The witnesses Sadasee and Bhoojungee (Nos. 7 and 8) deposed, that they were employed in their fields, near the

lowland, when the prosecutor and the witness Jankee came and asked them about the child, when they (the witnesses) told them, on their asking them, of their having seen the two prisoners taking the child to the lowland and returning without her. They also corroborate the statement of the prosecutor, in regard to their accompanying him and the witness Jankee to the house of the female prisoner, her stating that her husband had killed the child and her pointing out the spot where the body was buried, and whence it was disinterred in their presence. These witnesses also testified to the female prisoner's having afterwards given up the child's ornaments, which the prosecutor, the witnesses themselves, and also the other witnesses, identified, and to her likewise producing the knife used by her husband in murdering the child.

The witnesses, Jugroop Singh (No. 13,) Hurkhee Gorait (No. 14,) Kasee Singh (No. 15,) Gunesh Chowkedar (No. 16) and Ramdharee Singh (No. 17,) deposed to their hearing the prisoner state that her husband had killed the child, and to her agreeing to point out, as she afterwards did, the place where the body was interred, and whence it was exhumed in their presence. They also confirm the prosecutor's statement of the female prisoner's having, in their presence, given up the child's ornaments, as detailed by the prosecutor, and which were identified as such by him, by the other witnesses and themselves, the prisoner having also before them produced the knife with which, she said, that her husband had killed the child.

The witness, Musst. Buktee (No. 10,) the step-mother of the prisoner Musst. "Goonjurce," deposed to her having seen the latter give up the child's ornaments and to her hearing that "Goonjurce" had pointed out the spot where the body was.

The witness, Musst. Soomuriah (No. 11,) a resident of another village, but who, on her way home, had stopped at the house of the female prisoner, who was of her own caste, deposed to having seen the prisoner Goonjurce, on the morning of the day of the occurrence, bring the child from the prosecutor's to her own house, and leave the child at the door; and that after going in and drinking water, she went out and took the child away with her in an easterly direction. This witness also deposed to being present when the prisoner Goonjurce produced the child's ornaments.

The witnesses to the inquest held on the body in the mofussil deposed to its exhibiting two wounds, as if made with a knife on the right cheek, one two inches long and one inch broad, going right through, and the other one barleycorn long, half an inch broad and half an inch deep, two wounds, as if of a knife,

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on each side of the neck, each two inches long, two inches broad and each one inch deep, penetrating to the gullet.

Dr. Alexander Simpson, the medical officer who had examined the body, deposed in this court that "the body was very much decomposed. On the right side of the neck there were two very slight cuts, scarcely through the skin, and in the centre of that cheek there was a punctured wound penetrating the mouth and running downwards and backwards inside the jaw to the back of the throat, and terminating on a level with the wind-pipe. The wound at that place was nearly an inch in breadth, and this wound was, to the best of my judgment, the cause of death from loss of blood. This wound was probably inflicted by some sharp-pointed cutting weapon, and might have been made with an instrument such as that in court."

The prisoner Goolzar, before the darogah, denied having killed the child, but stated that the female prisoner had told him that she had done so.

The prisoner Musst. Goonjuree stated at the thannah, that her husband Goolzar told her to call Musst. Runeeah, which she did, and took her to her husband, who was in a *tope* near the lowland, and that her husband, leading the child by the hand, took her down by a ditch and throwing her on the ground and seizing her by the throat first inflicted two or three wounds with a knife, which he had about him, on the right cheek, and afterwards, when her husband wounded the child in the neck, she (prisoner) told him to desist, whereupon, in a rage, he threatened, if she did not be quiet, to kill her too, on which she remained concealed in a *mowah tope*, and afterwards her husband buried the body and gave her (prisoner) the child's ornaments to keep.

Before the magistrate and in this court both prisoners pleaded *not guilty*.

The prisoner Goolzar pleaded, in his defence, that it was not until after mid-day of Saturday, that he arrived at Shoo-chain, and that the prosecutor and *zemindar*'s people took him up in a *tope* on the road ; that he knew nothing of the occurrence, and that the prisoner Goonjuree had been tutored to mention his name. He called three witnesses, who, however, knew nothing.

The prisoner, Musst. Goonjuree, defended herself by pleading, that the prosecutor went to her house one night and wanted to have connexion with her, and that on her refusing, he drew a sword and threatened to get her into trouble ; that there had been a quarrel between the wife of Bunsee (the prosecutor) and the wife of one Udheen, during which the latter threw a stone at the former, which lighted on the

child, who was asleep, and killed her. She likewise pleaded that the ornaments were not found in her house and she did not know where the darogah had got them. She cited no witnesses in her own defence, but, to prove that it was on the Saturday that her husband went to Shoochain, she called one of the witnesses previously adduced by, and examined for, the male prisoner, but the witness so called was unable to say any thing.

The *futwa* of the law officer, declaring the crime of murder not proved against either of the prisoners, convicts them of being accomplices in the wilful murder of Musst. Runecah Chokree, for the sake of her ornaments, and pronounces them liable to punishment by *akoobut*.

It would appear, both from the calendar and magistrate's *roobukaree* of commitment, that the prisoner Musst. Goonjeree had voluntarily confessed the crime laid to her charge. Such, however, is not the case. She did, indeed, at the thannah, admit her own complicity, but she did not confess that she herself murdered the child, her statement being on the contrary that the deed was done by her husband in spite of her remonstrance. There is, therefore, no proof or evidence on the record fixing the actual commission of the murder upon the one prisoner more than upon the other, though the presumption is, that the male prisoner did the deed. The chain of circumstantial evidence, however, is, in my judgment, satisfactory and complete. The two prisoners being seen proceeding with the child, on the day of the occurrence, to the lowland and returning thence *without* her, the first admission of the female prisoner, at her own house, that her husband had killed the child, and her first agreeing to, and subsequently actually pointing out the spot where the body had been buried and whence it was disinterred with the marks of knife-wounds upon it, the production by the same prisoner of the child's ornaments duly identified, and the very knife with which, she said, her husband had killed the child; her second admission before the *darogah* of her own complicity and her husband's guilt and the evidence of the medical officer, added to the prisoner's altogether unsubstantiated defence, and there being no ground whatever for suspecting any one else of having committed the atrocity, leave no doubt whatever in my mind of the guilt of both prisoners, at least as accomplices in the crime charged.

Concurring, therefore, in the finding of the law officer, I would convict both prisoners of being accomplices in the wilful murder of Musst. Runeeah Chokree for the sake of her ornaments, and would recommend their being sentenced to imprisonment for life in transportation.

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Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Although there is no direct evidence to the perpetration of the murder, the circumstantial evidence is such as to leave no room to doubt that prisoners killed the child for the sake of its ornaments. The witnesses Sadasee and Boojunghee saw them, with the child between them, going into the hollow, and soon after returning without her, and close to the spot where they had first lost sight of them, the body was afterwards found. Furthermore, the female prisoner confessed, that she had enticed the child and been present at the murder ; and although the male prisoner denied his guilt to the darogah, the evidence is very strong as to his having owned it to the prosecutor, and begged him to let him off.

I concur in the conviction and sentence, the prisoners to be imprisoned for life, the man, with labor and irons, in transportation, and the woman, with labor suited to her sex, in the zillah jail.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

ROOPCHAND CHUNG (No. 1,) RAMDHONE CHUNG (No. 2,) JUGUTRAM ALIAS JUGUT HAREE (No. 3,) SHOOBUL CHUNG (No. 4) AND SHEIKH YASIN (No. 5),

HOOGHLY.

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September 21.

Case of
ROOPCHAND
CHUNG and
others.

Five prisoners, convicted of dacoity and of having belonged to a gang of dacoits, sentenced to transportation for life.

CRIME CHARGED.—1st count, with having committed a dacoity, attended with wounding, in the house of Rajeeb-lochun Mitter at Mandaram, on the 17th June 1844, corresponding with 5th *Assar* 1251, in which property to the amount of rupees 403-13-6 was plundered, and 2nd count, with having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 13th September 1853.

Remarks by the officiating additional sessions judge.—The prisoners are convicts in the Hooghly jail under sentence for dacoity.

They were committed by the commissioner for the suppression of dacoity and are charged with dacoity attended with wounding, committed in the house of Rajeeb-lochun Mitter at Mandaram, in June 1844, and with having belonged to a gang of dacoits. They plead *not guilty* to both counts of the indictment.

The dacoity under notice is thus described by the two approvers, who gave evidence against the prisoners. After the preliminaries had been settled and the gang got together, the rendezvous was fixed and the gathering took place. The party then moved on to the attack under the leadership of Nobin Sirdar and Shistidhur Sirdar. On reaching the village, Nobin and one of the approvers procured a *dhenki*, a heavy log of wood used for pounding, for the purpose of battering down doors, and having cut date-tree branches for offensive weapons and performed *Kali Poojah*, the gang commenced operations. Nobin scaled the wall and wrenched open the iron fastening which secured the outer-door. The body of the dacoits then entered the premises, while some stood at the *ghati*, guarding approaches, *mussals* were lighted and the work of plunder gone through. One of the females of the house was wounded on the head, but it does not clearly appear whether she was struck by the dacoits, or ran against a projecting rafter of the thatched roof in trying to escape from the premises. When the party re-assembled after the dacoity, the prisoner Jugutram alias Jugut Haree was missing, and the prisoners Roopchand Chung and Shoobal Chung affirmed, that he had decamped with his share of the booty; a scrutiny of the plunder was then made and the property taken charge of by the Sirdars, Nobin and Shistidhur, who undertook to sell it and divide the proceeds, which they did the following day. There is a discrepancy between the statement of one of the approvers made before the commissioner for the suppression of dacoity and this court, relative to the scrutiny of the plundered property after the dacoity. Here he maintains the fact, but there he asserted that each member of the gang appropriated what he got. The discordance is not very material, but I notice it, because it is a discordance.

After detailing the circumstances of the affair under notice, and establishing the complicity therein of all the prisoners, the approvers enumerate some ten dacoities, with particulars of time and place, in which they participated and were associated with the prisoners under the leadership of Nobin and Shistidhur, and in some instances of Gopal Dulia himself (witness No. 1) of the trial. In their detailed confession, before the commissioner, these persons mentioned as many more dacoities with the same details and would have gone through the list before me, had I required them to do so. Their statement is a clear, full and consistent recital.

The prisoners all make an uniform defence and charge the approver Gopal, with having got up this accusation against them for refusing to concert with him in a plan to break jail, which he formed, while their fellow-convicts under sentence in

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the Hooghly prison. To this plea, however, they cite no witnesses.

The approver's evidence, which convicts the prisoners, was recorded severally in May and August 1852, and I cannot but regard it as conclusive of the prisoners' guilt, who were not arrested till the month of August last. I, therefore, convict the prisoners on both counts of the charge and recommend a sentence of transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The conviction is good upon both counts. According to the evidence of the approvers, the prisoners were all engaged in the dacoity, charged in the 1st count, and the fact of that dacoity having been committed is established by independent testimony.

The following statement shows the number of dacoities in which the several prisoners were concerned.

Prisoner No.	No. of Dacoities according to the statement of Gopal Doolye.		No. of Dacoities according to statement of Rakhal Bagdee.	
	1	2	1	2
1	18		14	
2	17		12	
3	15		12	
4	12		14	
5	17		14	

In regard to twelve of the dacoities, named by the approvers, confirmation has been furnished from the records of the several districts in which they were committed.

The statements now made by the approvers correspond with those given in their original detailed confessions, which are stated, by the commissioner for the suppression of dacoity, to have been taken under circumstances which precluded the possibility of collusion.

The Court sentence the prisoners to imprisonment for life in transportation.

PRESENT:
 J. DUNBAR, Esq., *Judge*,
 AND
 H. T. RAIKES, Esq., *Officiating Judge*.

GOVERNMENT

versus

MUSST. FOOLBUSIA (No. 3) AND MUSST.
 TITREE CHUMAEEN (No. 4.)

CRIME CHARGED.—No. 3, 1st count, wilful murder of a new-born child; 2nd count, procuring abortion which caused the death of the said new-born child; No. 4, 1st count, being an accomplice, by aiding and abetting in the accomplishment of the above crimes; 2nd count, being accessory before and after the fact.

Committing Officer.—Mr. F. C. Fowles, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 22nd July 1853.

Remarks by the sessions judge.—The body of a full-grown infant, together with the placenta in an advanced stage of decomposition, was discovered in a well in the fields of Chowree, as deposed to by witnesses Nos. 20 to 23; information thereof being given to the police by the gorait of that place (witness No. 19,) on 27th March last, an inquest verifying it followed the next day, in the presence of witnesses Nos 2 to 4.

On inquiry amongst the Chumaeens, or midwives of the neighbourhood, Musst. Titree, (prisoner No. 4,) on 29th March, named the prisoner Foolbusia (prisoner No. 3) as having visited her, apparently having gone her full time. She wanted her to confine her prematurely, alleging she had been dishonored by thieves; but refusing she went away, and probably had got it done by another midwife, one Etwuria.

This led to Foolbusia's apprehension the same day, when she at once confessed. Her confessions, both before the police and magistrate, amply show, that accompanied by Musst. Etwuria (witness No. 11) she had gone to Musst. Titree's house, where Titree prematurely delivered her, in order to conceal her shame, caused as she said by thieves, which, however, her own mother (witness No. 12) would not confirm. Before the police she said the infant was born alive, as she had heard it, and that it afterwards died, when Titree removed it. Before the magistrate, that she was senseless, and did not know what had become of the infant, and though Titree told her it was born alive, yet on coming

BEHAR.

1853.

Case of
 MUSST. FOOL-
 BUSIA RAM-
 DOON and
 another.

Two females charged with the murder of a new-born child ac-
 quitted, there
 being no evi-
 dence to show
 that the child
 was born alive.

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another.

to her senses, she had never inquired after it. Before this court, pleading *not guilty*, she pretended Titree had confined her of a four months' child, and she could not account for its death. She called no witnesses.

On 1st April following, No. 15, Titree, set up the defence, that Foolbusia came to her house for such purpose, but she refused. She remained in her house, and shortly afterwards gave natural birth to an infant, which Foolbusia at once kicked to death. Foolbusia shortly afterwards took up the body, whilst she, Titree, accompanied her, and cast it into the well, where it was found. Her defence before the magistrate is to the same effect. Before this court she pleaded that the birth was natural, which Foolbusia at once put in a vessel and took away. She did not know whether the infant died from being kicked, or not. Of two witnesses named by her, besides Etwuria (witness No. 11,) one witness (No. 24) attended, but knew nothing in her favor.

Begun Chumar, (witness No. 1,) Titree's son, and Musst. Soondurbuseea (witness No 13), her grand-daughter, depose in support of the defence originally set up by Titree. Both were in the court-yard. Begun heard Titree call out, ran in, and saw Foolbusia kick the infant; and Soondurbusia following saw the infant dead. Etwuria, (witness No. 11,) a beggar, Foolbusia's companion's evidence before the magistrate, also trimmed with theirs, both as to the kicking and casting into the well, to which place however Titree accompanied them. Before this court she saw nothing since she had remained outside in the lane of the village, and did not go near the well. She deposes, however, to having accompanied Foolbusia from their village Kusoutee to Teyhree, where Titree resides, and back again, which, as generally stated, appears to have taken place during the same night. There is also the evidence of the two witnesses, Luchmun Chumar (witness No. 14) and Goordial Kandoo (witness No. 15,) who were outside the village of Teyhree in separate directions, and knew (singular coincidence) that Foolbusia and Etwuria, (witness No. 11,) had gone to Titree's from having questioned them as strangers, and afterwards, towards morning, as deposed to by them before this court, to having seen two women leaving the village and going to the southward, and one with a vessel on her head, although No. 14, before the police, and No. 15 then and before the magistrate, said, that they had recognized Titree alone carrying away a vessel. The same trimming is thus also observable in their evidences.

The *futuca* of the law officer acquits Foolbusia (prisoner No. 3) on the 1st count, under the Mahomedan law, but convicts her on the 2nd of procuring abortion, which caused the death,

and Titree (prisoner No. 4) as an accomplice in the same crime, and declares both liable to discretionary punishment by *tazeer*.

As above shown, it is impossible to place any reliance on such worthless witnesses as Nos. 1, 13, 11, 14 and 15. Their evidences have been manifestly got up in the case of the two first, and trimmed in that of the three last, to help Titree out of her trouble. The two first especially are grossly inconsistent and contradictory. Begun (witness No. 1) is a born cripple, and it is with the utmost difficulty he can crawl about, yet on Titree's calling out, he was able to reach the inner-room from the court-yard and see Foolbusia kick the infant to death, whilst the young active woman Soondurbusia did not. Before this court he acknowledged Titree was in the act of causing premature labor by pressure, and when asked why in that case Titree should have called out on the infant's being kicked, the only answer he gave was that it was her pleasure. Soondurbusia, (witness No. 13,) before the police, said, Foolbusia was not confined in their house. Before the magistrate, on the contrary, that Titree had delivered her and the infant died afterwards. Before this court, *contra* to both, that Foolbusia had kicked the infant to death. Proof of the crime therefore must be looked for independent of such evidences, and which I sufficiently find in the inquest, Foolbusia's confessions and the circumstances of the case. The inquest proves that the natural birth of the infant, if not criminally interfered with, must have been close at hand, yet Foolbusia walked from her own village to Titree's, to whom she was a stranger, a distance of two miles, solely with the object of procuring premature delivery, as avowed in her confessions, in order to conceal her shame, and which, to the best of my judgment, such circumstances corroborate. In the eye of the law, therefore, her guilt is just as great as if she had kicked the child to death after its birth. The criminal intent and act are as great in the one case as in the other, and I cannot therefore view her guilt in any other light short of the wilful murder of her new-born child, of which I convict her. This judgment necessarily views Titree (prisoner No. 4) as an accomplice in the same crime. The fact is undeniable, that the premature delivery, or the kicking to death, as pleaded by herself, took place in her own house and under her professional attendance, and she connived at the deed, until accident brought it to light. The well, out of which the infant was taken, was upwards of half a mile distant from the road between Kusowtee and Teylree. It seems very improbable that a person in Foolbusia's state would have gone so far out of her way to throw it there, whilst the probabilities are that Titree did it, as originally stated by the witnesses and acknowledged by Titree.

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herself before the magistrate to the extent of her having accompanied Foolbusia to within one *russee's* distance of the well. I accordingly convict Titree on strong presumption as an accomplice in the crime, but taking into consideration the wretched indigence, ignorance and prejudices of persons of the prisoner's class, would propose a mitigated sentence, *viz.*, prisoner No. 3, Foolbusia, to fourteen (14) years' imprisonment, with labor suited to her sex : prisoner No. 4, Titrec, to seven (7) years' ditto with ditto.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Raikes.)—Putting aside, as the sessions judge does, all the direct evidence, and, as we think, upon sufficient grounds, we do not understand how he can possibly convict Foolbusia of wilful murder. There is not a word in her confessions to show that she deliberately contemplated the death of the child should it be born alive, or that she killed it after its birth ; and there is no crime in the fact of the birth, or in that sense of shame, which led her to leave her own home to be delivered.

As to Titrec, she has said at every stage of the proceedings that the birth was natural. Her only admission of wrong doing is, that she went with Foolbusia and cast the child into the well, but there is no charge against her for this misdemeanour. We therefore acquit the prisoners.

PRESENT :

II. T. RAIKES, Esq., Officiating Judge.

GOVERNMENT

*versus***ARAMDEE PARAMANICK.****RAJSHAHYE.**

1853.

CRIME CHARGED.—Aiding and abetting in the murder of Pamosa Sheikh.

September 24.
Case of
ARAMDEE
PARAMANICK.

Prisoner convicted of aiding and abetting in culpable homicide, sentenced to three years' imprisonment. Appeal rejected.

CRIME ESTABLISHED.—Aiding and abetting in the culpable homicide of Pamosa Sheikh.

Committing Officer.—Mr. F. Beaufort, officiating joint-magistrate of Purnah.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 8th August 1853.

Remarks by the sessions judge.—This prisoner was tried with another acquitted in July, and the remarks in Statement No. 8 for that month were as follows :—

"This trial was supplementary to a former one, tried by me in December 1851, and which, owing to a difference between the law officer and myself, had to be referred (*vide* Nizamut Adawlut Reports for 1852, page 248, where full particulars of

the case will be found.) This trial was held with the same jury as the preceding one, and after the evidence, *pro* and *con*, had been taken, I explained to them, that as the superior court had, in the former reference, convicted six other prisoners as principals, and of aiding and abetting in the culpable homicide of the deceased, they could not find the prisoners guilty of murder, or the offence charged in the calendar. If they did, it would be finding them guilty of a greater crime than that for which others had been already convicted and punished. The next thing for them to consider was, if the prisoners were active or passive spectators of what took place. If some of the witnesses were to be believed, No. 1 actually struck the deceased, No. 2 however did not. It was also necessary for them to keep in mind that the zemindar's people or the *ryots* went to the *chur*, before the factory people or Pamosa's party. Some therefore who went *first* might have been present, though not aiding and abetting in the attack made on the deceased, and there must be some overt-act or show of violence, towards the deceased, to constitute either of the prisoners aiders and abettors in his death. The jury on this gave in a verdict of *not guilty* of aiding and abetting in the wilful murder of Pamosa Sheikh. I then asked them to consider if aiding and abetting in culpable homicide against either of the prisoners was proved, when they brought in a second verdict of *guilty* of aiding and abetting in culpable homicide against No. 1, but acquitted the present prisoner. I have therefore, concurring entirely in the verdict, directed his release. As regards the other prisoner, a reference was made to the Nizamut Adawlut on the 27th ultimo, and in the mean time he has been ordered to be detained in the *hajut*.

The result of the reference was, that it was not illegal in the joint-magistrate sentencing the prisoner in two cases, *subsequent* to his commitment to the sessions, and that I was to take up the appeals by the prisoner from the orders passed upon him by the joint-magistrate. Accordingly, these were disposed of and the prisoner then sentenced, as stated in the preceding column."

Sentence passed by the lower court.—Three (3) years, imprisonment, without irons, and to pay a fine of rupees (100) one hundred, on or before the 21st August 1858, or in default of payment, to labor until the fine be paid or the term of his sentence expires.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The particulars of this case, and the trial of the principals and others, are given in detail at pages 248—252 of the Nizamut Reports for 1852; the prisoner appealing has been convicted of aiding and abetting in culpable homicide

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on the evidence of eye-witnesses, and has set forth nothing in his appeal, but a general denial of any participation in the crime.

I see no reason to interfere with his conviction, or with the sentence passed upon him.

PRESENT :

J. DUNBAR, Esq., Judge,

AND

H. T. RAIKES, Esq., Officiating Judge.

GOVERNMENT AND MOTHOR LOHAR

versus

KEETARATH ALIAS KEETARAM PUNDIT.

BEERBHOOM.

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Prisoner charged with wilful murder and convicted by the sessions judge of culpable homicide, acquitted in appeal owing to the conflicting nature of the evidence.

CRIME CHARGED.—Wilful murder of Syemonee Loharin, wife of Mothor Lohar, prosecutor.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. W. H. Brodhurst, officiating magistrate of Beerbboom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbboom, on the 16th July 1853.

Remarks by the sessions judge.—It appears that some time since, the prosecutor and several others of the lohar tribe had been in the habit of supplying the prisoner, who is a mahajun, with iron, but being dissatisfied as well with the remuneration as the treatment they received, they decamped from the village in which the prisoner carries on his business, and came to reside at Parkdahar.

On the 13th Bysakh last, corresponding with the 24th April, the prisoner, accompanied by the molurir of thannah Dhunkah, a burkundauz, four other mahajuns and a gang of eight or ten chowkeedars, arrived at mowza Parkdahar, and began to search the houses of certain of the lohar tribe, who were suspected of having committed an alleged theft in prosecutor's shop; and after a short time, the party departed on their return with one person in custody, in whose house a lotah, alleged to be part of the stolen property, was found.

Several of these lohars, who had so recently settled in Parkdahar, after quitting the neighbourhood of the prisoner, were in debt to him for advances made for the supply of iron, and it was probably to punish these unfortunate people, who are really so poverty-stricken, that they have scarcely enough to support life, for decamping from their former quarters, where he had apparently been grinding them to the dust, or to realize from them the advances which were outstanding

against them, that the charge of theft was trumped up. However this may be, it appears, that ere the party, headed by the mohurir of thannah Dhunkah, left the village, the prisoner entered the prosecutor's house and was told by his wife (the deceased) that he was not at home. Some words then passed between them, when the prisoner becoming enraged, seized the woman by her hair, threw her down on her back, and stamped twice upon her chest just below the left breast, having thick shoes on at the time. She managed to turn on her side, when he kicked her again behind, and then went away to rejoin his party. The unfortunate woman died in about half an hour, never having been able to rise or speak after.

The above facts are sworn to in a consistent and satisfactory manner by four eye-witnesses, all of the same caste and profession and next-door neighbours of the prosecutor, one of whom started almost immediately, even before the prosecutor returned home or had become acquainted with the occurrence, to report the circumstance at the thannah of Khurbunnah, within whose jurisdiction Parkdahar is situated.

On the following day, *viz.*, the 25th April, the darogah and mohurir of thannah Khurbunnah arrived at the spot and held an inquest on the body, when the statements made by the four eye-witnesses, which were taken down on the same date, were confirmed in every respect. One of the witnesses (No. 8) to the inquest, whose evidence was not taken in the magistrate's court, made an effort to screen the prisoner by stating that the marks under the breast of the deceased did not appear as if they had been caused by blows, but that they were rather what he called a *khaul*, formed, as he imagined, suiting the action to the word, by the pressure of the deceased's arm on her chest! In his cross-examination this witness admitted that he had seen the corpse only a short time after death had ensued; that he had then heard from the eye-witnesses how the prisoner had committed the deed, and he actually accompanied witness No. 1, as he went to report the occurrence at the thannah. This witness certainly prevaricated on a very important point, but I am of opinion that the answers that were elicited from him on his cross-examination, afford a strong but unwilling support to the case for the prosecution.

The civil assistant-surgeon, to whom the corpse was sent on the 27th April for examination, reported to the magistrate that it was too far decomposed to allow of his pointing out the cause of death. I however took his evidence, and in it he states that he was unable to observe any traces of disease, and that he dissected the parts where the marks were observed, but did not find any extravasated blood, which he would have done

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had the bruises been severe. In answer to the question, *viz.*, "If the marks you speak of were caused by a man stamping on the deceased with his shoes on, would death have been likely to ensue?"—He replied, "Death might have ensued, as such cases have been known to occur."

The prisoner pleads *not guilty* and states that his brother, Munohur Pandey, reported at the thannah Dhunkah a theft that had occurred in their shop, and requested that an investigation might be made; the mohurir and a burkundauz came to the spot, and after searching the houses of parties who were suspected in one or two neighbouring villages, they came to Parkdahar, in this district, accompanied by four other mahajuns and nine chowkeedars, and searched the houses of Lal Majhee and another, but omitted to search the house of a third party, as he was not found at home; they then, with one prisoner, whom they had apprehended, returned to Taldeehar, and on the following day reached his shop at Ookra Paharee; that afterwards, whilst the mohurir of Dhunkar was writing his report, the darogah and moonshee of thannah Khurbunnah (in this district) arrived and took him into custody; that the prosecutor's witnesses are his relations, and that although he himself is not in debt to him, they are so.

In his defence he has called the mohurir and burkundauz of thannah Dhunkar, the four mahajuns and seven of the chowkeedars, who accompanied him to the scene of the occurrence, and they all, in every particular, corroborate his defence and maintain that no assault was committed by the prisoner.

The jury, who sat with me on this trial, brought in a verdict of *not guilty*, either of wilful murder or of any minor offence.

They said they did not credit the evidence for the prosecution, and considered the defence established by the depositions of the witnesses called by the prisoner.

I disagree with this verdict, and am at a loss to understand on what grounds the jury could have arrived at such a conclusion. As for the evidence for the defence, I consider it utterly worthless. At the best it is merely negative, and furnished by parties who were really for the most part more deserving of a place in the dock than the witness-box: indeed, I look upon each individual witness as more or less implicated in the homicide, and therefore interested, deeply interested, in making it appear that no such homicide occurred; for if the evidence for the prosecution is credited, the culpability of these witnesses, especially of the police mohurir and burkundauz, seems to be an unavoidable deduction. The circumstances of the case, compared with the prisoner's defence, appear to me to suggest the inference that the whole party were cognizant of what had occurred, and that that was the

cause of their precipitate retreat before they had completed what they had come so far to accomplish. The mere absence of a suspected party was not likely to interrupt their proceedings against these lohars, though the fact of one of the party having killed the deceased is very likely to have done so.

On the other hand, the case for the prosecution is supported by the direct evidence of four eye-witnesses, persons no less illiterate than they are poverty-stricken, and utterly incompetent, as I believe, to concoct, on the spur of the moment and in the absence of the husband, the party chiefly concerned, a conspiracy against the prisoner, and then to retain in their minds the story in all its integrity for the space of two and a half months, and also by a body of circumstantial evidence, which it would be, in my opinion, unreasonable to reject.

I am of opinion, however, that the crime does not amount to wilful murder; for as far as the deceased is concerned, the existence of malice, or the deliberate intention to destroy life, in the mind of the prisoner, is not to be assumed. I convict him, therefore, of culpable homicide, and as there are grounds for supposing that the woman, though certainly in good health, and free from any disease, was in a somewhat weakly state from the effects of insufficiency of means to provide the full necessities of life, I consider that a sentence of imprisonment for the period of five (5) years, with labor and irons, is the punishment that justice demands.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Raikes.)—MR. J. DUNBAR.—After carefully weighing the evidence, both for the prosecution and the defence, I do not think the conviction can be sustained. There are many material discrepancies in the statements of the four witnesses, who swear to the fact, as given at the different stages of the inquiry. Some of them assert, that the moonshee or thannah Dhunkah and others were present. Some say, that the prisoner committed the violence which caused the death of the woman, after the whole of the others of his party had gone.

That the deceased died on the 24th April last, the day on which the prisoner and his party were at Pykdahee, I see no reason to doubt, but exclusive of the doubts I have of the truth of the evidence of the four witnesses alluded to, it seems to me to be almost certain, from the evidence of the medical officer, that she did not die from kicks applied in the manner sworn to. According to the evidence of the witnesses, the kicks were severe, (and they must necessarily have been so to cause death,) yet Mr. Craddock, the civil surgeon, found no extravasation of blood, although he says

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extravasation would have been the certain consequence of severe bruises.

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While the case for the prosecution is weak, that for the defence appears to me satisfactory. The evidence of the mohurir and burkundauz, (which is supported by that of many others,) as given on the trial, entirely corresponds with the statements made by them to the darogah, the day before the prisoner was put on his defence.

In a case like this, in which every thing depends upon the value to be placed on the conflicting evidence adduced for and against the prisoner, I think much weight is due to the opinion of the jury. It consisted of five respectable Hindoos. They are unanimous in acquitting the prisoner. I concur with them in thinking that no crime is proved against the prisoner, and would acquit.

Mr. H. T. RAIKES.—The evidence of the medical officer, regarding the appearance of the body, makes me regard the evidence of those who describe the death, as the result of great personal violence, with considerable doubt ; and as there are discrepancies in their statements not reconcilable in the accounts of parties stating themselves to have been actual eyewitnesses of the assault, I am of opinion that it would be very unsafe to trust to such testimony, even in the absence of the strong exculpatory proof brought forward by the prisoner. With that before us, I have no hesitation in concurring in the opinion expressed by Mr. Dunbar in favor of the prisoner's acquittal.

PRESENT:

SIR R. BARLOW, BART., }
 AND } *Judges.*
 J. R. COLVIN, Esq., }

GOVERNMENT

versus

SADOO MUNDUL (No. 16.) KASEE SHEIKH MUNDUL (No. 17.) SURRYE KAZEE ALIAS SURA KAZEE (No. 18.) RAMSOONDER DOOLEE ALIAS SOONDRA HAREE (No. 19.) AND FUTTINGA SHIAH ALIAS FURRINGA (No. 20.)

CRIME CHARGED.—1st count, wilful murder of Buktar; 2nd count, accomplices in the above crime; 3rd count, accessories before and after the fact, and 4th count, privity.

Committing Officer.—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 19th August 1853.

Remarks by the sessions judge.—The law officer, in his *futwa*, convicting the first four prisoners of privity, both before and after the fact, to the killing of the deceased, and which killing he defines to have been murder, the reference is unavoidable.

No body was discovered; but there can, I think, be no doubt that the deceased was deliberately murdered by some of the villagers, who combined together to make away with him.

The first report sent in by the police was, that the deceased, who was a bad character, had left his village some days, on which an order was passed by the magistrate that his means of livelihood should be inquired into.

No inquiry, however, could be held, as he was not to be found; and this, it would be seen, after some considerable delay, led to the apprehension of the prisoners.

There is very little evidence, but the testimony of the deceased's wife and his brother (numbered 6 and 7 in the calendar) is most to be relied upon, and all I shall abstract; and it will, I think, be found, that the confessions of the four first prisoners, made before the officiating magistrate, confirm the statements of these two witnesses in the main.

Witness No. 6 deposed, that about midnight the prisoner No. 16 came to her house, and told her husband his brother's house was on fire: her husband then went out with the prisoner, and though she wanted to go too, they would not allow her to do so. After this she heard first from Kenoo Sheikh and then from her brother-in-law, that the prisoners had killed her

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ries before and
after the fact,
and a fourth
prisoner as an
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wilful murder,
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husband and were sitting near his body at a *pawn* garden ; that the prisoners all before complained of her husband, No. 17, that he had set fire to his house, No. 18 that he had stolen *pawn* from his *pawn* garden and No. 19 that he had not paid him for attending his marriage with her (witness') rival, and which had taken place eight or nine months before. On being questioned, with reference to a statement made by her father-in-law, the witness denied that No. 16 ever wanted to intrigue with her, or that there had been any dispute with her husband on this account. All the prisoners, except No. 19, had offered her money to settle the matter in the village.

From the way this witness gave her evidence, and her general demeanor, that of a decent and modest woman, I place every reliance on what she deposed to. She was in fact the only person who knew any thing about the case or witnesses, the Government vakeel knowing nothing whatever and not giving the least assistance to the court.

Witness No. 7 deposed, that his house was set on fire ; that after he had put it partially out, he went to the house of his elder brother, and when going along, he saw the prisoners sitting by a body lying near a *pawn* garden. When he arrived at his brother's house, he heard from his wife that the prisoners had killed her husband and were sitting near the body, on which he informed the chowkeedar. He knew of no enmity between the deceased and prisoners, and that his brother had never been apprehended on any charge. He also deposed to recognizing the body, on the ground, as that of his brother and added that he went to give his sister-in-law information of this.

Witness No. 1 first repudiated his foudjadar deposition altogether. It would appear he was at the time in the employ of No. 16, and taking into consideration the great delay that has taken place in holding the trial, it is quite *possible* he may have forgot what he saw or heard, for he is apparently a lad of very little intelligence and might almost be called a *dolt*.

On being asked the second day if he had given the deposition in the foudjadar, he admitted he had, and the reason why he denied before was, because something had come over him (in his *dil.*) As the confessions of the prisoners before the magistrate had then been attested, the witness was not re-examined.

As these confessions must be read, I do not translate them. The substance of all is the same, *viz.*, that there was a plot or combination among the villagers to kill the deceased, as he was a bad character, and that they were all present when he was strangled by others, but they had no hand in his death ; and subsequently, his body was taken away by the persons they named.

The confessions were fully proved to have been voluntarily made by the prisoners, before the officiating magistrate in the cutcherry, on the 25th of April last.

The mofussil confessions, as there had been some delay in taking them, I did not read or have attested; and it was evident the defence (as usual) would be, had they been obtained through mal-treatment, and thus a great deal of time would be uselessly wasted.

The prisoners Nos. 16, 17 and 18 set up *alibis*, and No. 19 that he was ill of fever, but the law officer does not credit the evidence for the defence, and it is too general and vague to place any reliance upon it.

Now with reference to the convictions and sentence under the *futwa* (which, in my opinion, does not go far enough,) No. 16, I think, it may safely be affirmed, was the most culpable. He inveigled the deceased out of his house to go and help to put out a fire in his brother's house, which fire, again, he and others, it may be presumed, had themselves purposely caused, to get the deceased to leave his own house at night and to fall into the trap they had set for him.

This prisoner, I would therefore propose, be convicted of being an accessory, both before and after the fact, to the murder of Buktar, and sentenced to be imprisoned, in transportation, for life.

The other three, with reference to the sentence of the court in the case of the prisoners named

Ajoollah Sheikh—Narain Jaleah (Nizamut Adawlut Reports for 1853, page 339.) in the margin, I would suggest, be sentenced to fourteen (14) years' imprisonment with labor in irons.

As in the case cited, they (if any reliance is to be placed in their confessions) must all have been concerned in the plot to murder the deceased and were present when he was actually strangled.

No. 20, against whom there was no proof, except recognition by the witness No. 7, has, agreeably to the *futwa*, been released.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. R. Colvin.)—No. 16, Sadoo Mundul—No. 17, Kasee Sheikh—No. 18, Sura Kazee—and No. 19, Rainsoonder Doolee. The prisoners were seen in the act by a boy, Keenoo Sheikh, fourteen years of age, who stated the fact in the mofussil and deposed to it before the magistrate. This witness at first repudiated his foudaree deposition in the sessions, but subsequently acknowledged it. The prisoners Nos. 16, 17 and 18, in the foudaree court, confessed that they, Goraio and others had consulted and determined to kill Buktar, the deceased, who was a bad character, a thief and dacoit, as alleged by No. 16. The

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others set fire to the house of Iktar, brother of the deceased, who ran out on the alarm, and Goraie, with others, seized and killed him by the river side, at a short distance off, when they went and saw the corpse. This was at about 10 o'clock at night.

The prisoner No. 19 also confessed before the magistrate, that he was present on the spot at the time and saw the murder committed.

We convict the prisoners Nos. 16, 17 and 18 as accessories before and after the fact, and the prisoner No. 19 as an accomplice. Differing altogether from the view which the sessions judge has taken, of the varying extent of the measure of the guilt of the prisoners, we convict them as above and sentence all alike to transportation for life, with imprisonment in irons and with labor.

PRESENT:

SIR R. BARLOW, Bart.,
AND
J. R. COLVIN, Esq., } Judges.

GOVERNMENT

versus

OUNGEO-JYNE.

ARRACAN.

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Case of

OUNGEO-JYNE.

Prisoner, a native of Arracan, convicted of wilful murder under an excess of wild and ungovernable rage, sentenced to capital punishment.

CRIME CHARGED.—1st count, wilful murder of prisoner's father, Phoung-we; 2nd count, wounding Mung-bo, son of Yathe-oung, and Khe-oo, son of Hla-bun, with intent to murder.

Committing Officer.—Mr. W. T. Law, magistrate of Akyab. Tried before Captain Henry Hopkinson, commissioner of Arracan, on the 3rd August 1853.

Remarks by the commissioner.—The committing officer, Mr. W. T. Law, made the Government prosecutor in the case.

The prisoner in this case is the son of Phoung-we, whose murder is charged, and also father-in-law of the wounded child Khe-oo, a son of his present wife Hla-bun, the principal witness in the case, by a former husband. The parties are all resident in the circle of Mregnoo.

On the day of the 24th December 1852, the deceased Phoung-we, the prisoner Oungeo-jyne, the witness Hla-bun, the prisoner's wife, her son, the wounded child Khe-oo, aged between two and three years, Yathee-oung, a witness, and Yathe-oung's son, Mung-bo, the other wounded child, aged about five years, were together at the prisoner's thrashing-floor, in the rice-fields, about a mile from the village, where he resided. The prisoner had finished the thrashing of all the paddy

he had in that particular locality, and in company with the deceased, Phoung-we, Hla-bun and her son Khe-oo, and taking with him a female buffalo (used in treading out his paddy) was about going off to another thrashing-floor, close to the village, where the witness Yathe-oung lived, when Yathe-oung asked the prisoner to take the child Mung-boo to his mother, and the prisoner consenting, the five, Phoung-we, Oungeo-jyne, Hla-bun, Khe-oo and Mung-boo, quitted the thrashing-floor. The prisoner had with him a *dha-shay* or long *dha*. The party had proceeded about four hundred yards, when the prisoner releasing the buffalo he was holding, or the animal escaping from him, turned upon the child Mung-boo, and cut him down with the *dha*, which, as above stated, he carried with him, whereupon the deceased Phoung-we remonstrating, the prisoner next attacked him and cut him down also. He then turned towards his wife, who casting away her bundle and her child Khe-oo, fled in affright; then it was that the prisoner wounded Khe-oo. The wounds were of the most frightful and desperate character. Of Phoung-we, the spine of the blade-bone and all the muscles were cut through; Khe-oo had his left arm nearly severed, and it required a difficult operation to save his life, the head of the humerus having to be removed altogether; Mung-boo had a great slashing cut on the left thigh. The weapon, with which these injuries were inflicted, was an ordinary *dha-shay*, or sword *dha*, of lighter make, better temper and sharper than the ordinary woodman's *dha*: it measured in the blade about twenty-two inches, with a breadth of one and a half inches, and weighing with the handle five tolahs less a seer. The witness Hla-bun made the best of her way back to Yathe-oung, to whom she first communicated the dreadful outrage she had witnessed and the wounding of his child. Oungeo-jyne, the prisoner, leaving his victims to their fate, went and sought shelter in a deserted monastery, where he was apprehended on the evening or nightfall of the same day, by the riwagoungs and villagers of Mregnoo, who found him sleeping, the *dha* almost in his grasp and by his side, but with no marks of blood about it. Early the next morning (the 25th December) they conveyed him to the Akyab *thannah*.

This is the case for the prosecution. It is confirmed by, or rather, indeed, it is, in every particular, founded on the evidence of Musst. Hla-bun, (No. 1,) the only witness to the fact. She states in addition that the buffalo the prisoner was driving was going quietly along at the time; that no previous provocation had been given; that the attack was made without any reason; that the prisoner had not been drinking and was perfectly sober, and that he is of a mild and peaceable

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disposition. The witness saw the deceased Phoung-we and the children Khe-oo and Mung-boo admitted into hospital and attended to by Dr. Mountjoy, the civil assistant surgeon.

Chain-ree (No. 2) and Chain-twain (No. 3) describe the circumstances attending the apprehension of Ounggeo-jyne; their finding him in the deserted monastery about evening gun-fire lying down, covered over with his *put-tee*, and his *dha* beside him. The prisoner confessed the cutting down of the deceased Phoung-we, Khe-oo and Mung-boo.

Chain-ree (No. 2) Rwa-goung, Phaunre-keouk of Mregnoo and Dr. J. W. Mountjoy, depose to the *sooruthal*. I need only refer to the evidence of this last witness, as to the nature of the wounds of which Phoung-we died on the morning of the 29th December 1852, and the nearly mortal injuries inflicted upon Khe-oo and Mung-boo. Dr. Mountjoy states, that the wound on the right blade-bone of Phoung-we was of itself fatal. I beg also to remark, that that gentleman has stated that he is perfectly satisfied of the sanity of the prisoner.

Yathe-oung (No. 11,) as circumstantial evidence, describes his giving his son Mung-boos, to take to his mother, in charge of the prisoner Ounggeo-jyne, on Friday the 24th December, at about 5 p. m., when the latter was leaving the thrashing place with the deceased Phoung-we, Musst. Hla-bun and the child Khe-oo. The prisoner had a female buffalo with him, which seemed to go along very quietly. The prisoner was quite sober; the witness knew him intimately and had never observed the slightest indication of an unsound mind in his actions.

The prisoner made a full confession of the crime with which he is charged at the Akyab *thannah*. He stated there, that on Friday the 24th December, at about 5 p. m., he, with his wife, Hla-bun, Phoung-we and Khe-oo and Mung-boos, were returning from the thrashing-floor towards their village, when after they had proceeded about 400 yards, a buffalo, which the prisoner was driving, broke loose from him, and his father, Phoung-we, and the rest, making no effort to assist him in catching it again, he turned upon them and cut them down with his *dha*—first Phoung-we, then Mung-boos, lastly, when his wife abandoned, the child Khe-oo.

Before the magistrate, with very little variation, the prisoner confirmed and repeated his *thannah* confession. He now stated that when the party had proceeded some distance on the road, he was unable to control his buffalo, who having once before broken loose and got into the rice-fields wanted to do so again. He called his wife to assist him, she did not; he got annoyed with and pursued her. Phoung-we interposed,

and prisoner being angry then, cut him and the two children down, his wife throwing her bundle away and running off.

Before the sessions court, the prisoner Oungeo-jyne, while admitting his confessions to have been freely and voluntarily given at the *thanna* and before the magistrate, sought to qualify them by a representation, that they were not in fact true, but had been put forward to a certain extent under the advice of the parties who assisted in his apprehension, as the best explanation he could give of conduct otherwise altogether inexplicable, even to himself; in reality he was not conscious of what he was doing when he committed the acts charged against him. His wife had given him the previous day some buffaloe's milk to drink, which had disagreed with him and disordered his brain, and in this condition, when a prey to fancies, he knew not why he had committed the dreadful crime.

After consideration of the evidence of the confessions made by the prisoner at the *thanna*, and before the magistrate, and with reference to what the prisoner has urged in his defence in the sessions court, I am of opinion that he, the prisoner Oungeo-jyne, is guilty of the murder of the deceased Phoung-we, and on the 2nd count, of the charge that he is also guilty of wounding, with intent to murder, Mung-bo and Khe-oo. I can find no extenuating circumstances attending the crime, which has been proved against the prisoner Oungeo-jyne; the absence of any motive for its commission does not affect my opinion of its character. I do not consider that its atrocity is at all mitigated by the circumstances of its being unaccountable. If the prisoner had been liable to fits of temporary derangement, that would have accounted for it, but the conclusion to which the evidence leads is that the prisoner is not liable to such fits. On the contrary, it appears that he has always been, and is now in possession of his sound senscs. All that the prisoner did before the murder and after the murder seems to show consciousness and an ability to judge of the consequence of his actions, supposing him at the actual moment of perpetrating the horrid deed, to have been laboring under a species of partial insanity. I believe it to have been, not the partial insanity of disease, but of wild, ungovernable, frantic humour, which, from my experience of the character of the Arracanese, I can imagine, might be excited by so trifling an annoyance even, as that to which the prisoner alludes in his confessions before the magistrate and at the *thanna*—the trouble of managing an unruly buffalo, and his friends disregarding his call on them to assist him in catching it when it broke loose. If this were not the incitement, the only other presumption, warranted by the facts elicited at

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Case of
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the trial, is that the prisoner was actuated by an unnatural, depraved and frenzied inclination to shed blood, for the sake of shedding blood. Either view of the case is fully criminalatory, and I beg to recommend a capital sentence on the prisoner Oungoo-jyne.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. R. Colvin.)—This is a cruel murder of a father by his son (the prisoner,) without any provocation whatever: it was also attended with dangerous wounding of two children of three and five years of age. The prisoner confessed the deed before those who apprehended him, before the police and before the magistrate of Akyab. His defence before the commissioner of Arracan admits these confessions, but he qualifies them by urging that he was advised to make them, and pleads that he was not conscious of what he was doing. There is, however, clear evidence of the prisoner's sanity, and no circumstances of mitigation present themselves in the case. The act was doubtless an excess of wild and ungovernable rage, natural it would appear to the temper of the Arracanese.

We entirely concur in the view which the commissioner has taken of the case, and sentence the prisoner to death as recommended by that officer.

PRESENT :

SIR R. BARLOW, BART., }
 AND } Judges.
 J. R. COLVIN, Esq., }

GOVERNMENT

versus SUROOPCHUNDER GHOSE (No. 30) AND HURSOON-DREE BOISTOMEE (No. 31). RAJSHAHYE.

CRIME CHARGED.—Prisoner No. 30, with uttering a forged *pottah*, knowing the same to be forged; prisoner No. 31, 1st count, with being an accomplice in the uttering of a forged *pottah*, 2nd count, with being privy to the above.

CRIME ESTABLISHED.—Prisoner No. 30 uttering a forged *pottah*, knowing the same to be forged; prisoner No. 31, accomplice in the uttering of a forged *pottah*.

Committing Officer.—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 19th August 1853.

Remarks by the sessions judge.—The real prosecutor in this case is the same as that in case No. 2, decided on the 15th August.

It would appear he had given the prisoner No. 31, a prostitute, a *pottah* for $1\frac{1}{4}$ *cottahs* of land, to erect her dwelling upon. The house was burnt down, and the prisoner was about to erect another, taking in more land than she was entitled to. To this the prosecutor objected, and the case came before the police, when the prisoner No. 31, in company with No. 30, a mookhtar, produced a *pottah* on stamp paper. The prosecutor, however, denied having ever given the *pottah* produced, and on referring to the date of sale of the stamp, the darogah found it was subsequent to that the *pottah* bore. The forgery being a palpable one, both the prisoners were forwarded to the magistrate, and by him they were committed to the sessions. No. 30 admitted giving in the *pottah* at the thannah to the darogah. It is a *pottah* for 2 *cottahs* of land dated the 7th Bysakh 1256 B. S., the date of the sale of the paper on the back is 22nd Bhadoon 1257, and there is no erasure, or scratch in either of the dates. When called upon for his defence, No. 30 pleaded that he never saw the *pottah* before, No. 31 gave it to him, and his presenting it to the darogah; he could not however explain how the date of the *pottah* was prior to the date of the sale of the stamp on which it had been engrossed. No. 31 pleaded she had first obtained a *pottah* on plain paper from the prosecutor, which, together with her house, was burnt in the month of Bhadoon. The

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Case of
SUROOP-
CHUNDER
GHOSE and
another.

Two prisoners convicted of uttering a forged *pottah*, knowing it to be forged, sentenced by the sessions judge. In appeal, conviction and sentence upheld.

A magistrate is competent to make Government the prosecutor on any charge of forgery, or of uttering a forged document, not falling within the special provisions of Act I. of 1848.

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Case of
SUROOP-
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another.

prosecutor then gave her the *pottah* produced on stamped paper, taking from her the price of the stamp. In Cheyt last, her house was again burnt, when the prosecutor would not let her erect her house on her *pottah* land. She then complained to the darogah, and the Ghose (prisoner No. 30) gave in the *pottah* which she had given to him, as he went with her to the thannah. The receipt (from the prosecutor) of the *pottah* on a stamp the prisoner quite failed to establish. The *futwa* convicts the prisoners of the offences with which they are respectively charged, and concurring entirely in the finding, I have sentenced them as herein stated. That No. 30, a mookhtar, should not have been aware how the *pottah* came into his client's hands is preposterous, and I suspect the female prisoner had some *sinister* reason for trying to exculpate him.

Sentence passed by the lower court.—Prisoner No. 30, three (3) years' imprisonment without labor, and prisoner No. 31, two (2) years' imprisonment without irons, and to pay a fine of fifty (50) rupees on or before the 4th September 1853, or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow Bart, and Mr. J. R. Colvin.)—The appeals are first on the illegality of the prosecution, in which the prosecutor is Government on the part of Kaleenath Dutt, (who states before the magistrate that he makes no direct charge of forgery,) and in which the uttering took place only before a darogah of police. But the magistrate is quite competent to make the Government a prosecutor on any charge of forgery, or of the uttering of a forged document not falling within the special provisions of Act I. of 1848, and the mistake has only been in describing this prosecution as instituted on behalf of the particular party to whom the forgery was injurious. This can, in no way, render the trial illegal.

The defence of the prisoner No. 30, on the facts, is, that he had no connexion with the case, but gave the *pottah* as it was handed to him by the other prisoner, he happening to be at the thannah at the time; but it is clearly shown on the record, that he went to the thannah as mookhtar of the prisoner No. 31, who had the personal interest in the matter of the *pottah*, and in her company, and that he there presented the *pottah* as acting for her. He summoned, indeed, a number of persons, whom the prisoner No. 31 named also as her witnesses, to prove that the forged *pottah* was the identical document which had been given to that prisoner by Kaleenath Dutt, thus clearly showing his own connexion with the transaction.

The defence of the prisoner No. 31, on the facts, is, that she received the *pottah*, the forgery of which is not denied, from Kaleenath Dutt.

The proof of this assertion, as tendered on the part of either of the prisoners, entirely fails.

I see therefore no reason to interfere with the convictions or sentences.

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Case of
SUROOP-
CHUNDER
GHOSE and
another.

PRESENT:

SIR R. BARLOW, Bart., Judge.

GOVERNMENT

versus

NEEDHOO SHEIKH (TRIAL NO. 17) AND PEEROO
SHEIKH (TRIAL NO. 18.)

CRIME CHARGED.—Perjury, in having, on the 4th July 1853, intentionally and deliberately deposited, under a solemn declaration instead of an oath, before the officiating joint magistrate of Pubna, that he had made no deposition before the deputy magistrate in the case of Odhoo Sheikh *versus* Azimooddeen Chowdree and others; such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

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Case of
NEEDHOO
SHEIKH and
another.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. F. Beaufort, officiating joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 26th July 1853.

Remarks by the sessions judge.—TRIAL NO. 17.—This case was tried with a jury of five individuals, one the kazee of Esufshaie and formerly moonsiff of Attya, in the Mymensingh district, who had occasion to visit Pubna on business of his own, and the other four consisted of the serishtadar of the uncovenanted deputy collector's office and three vakeels of the moonsiff's court at Pubna.

Two prisoners convicted of perjury, sentenced by the sessions judge to five years' imprisonment. Appeal rejected.

The charge in a manner explains the case, and the following remarks are inserted in the fourteenth column of the joint magistrate's calendar:—"A charge was instituted against certain persons for homicide. It was made over to the deputy magistrate for investigation. The prisoner appeared before that officer and detailed the particulars of the homicide, distinctly stating that he was an eye-witness of what had occurred. He now denies that he made any deposition at all before the deputy magistrate, although the written deposition is on record and was read over to him when he appeared before me to give evidence."

The prisoner pleaded *not guilty*. An acting mohurir of the foudarce court, and who was formerly a *bukshiee* of the

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Case of
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another.

nazir, deposed to his having taken down the first part of the deposition filed, and given, on the 27th April last, before the deputy magistrate ; and another witness, also a *bukshhee*, deposed to having repeated to the prisoner the solemn declaration, instead of an oath, before he gave his deposition. What he deposed to, he could not say. The prisoner admitted having made the deposition dated the 4th of July, (appended to the deposition which he denied having made and dated the 27th April,) therefore no evidence was taken to this deposition being given by him. When called upon for his defence, he gave in a written one, or a petition, praying that certain witnesses named might be summoned to prove he was beat and maltreated to give evidence before the deputy magistrate. These appearing to be all servants of the party accused of murder, or homicide (which is not clear,) and as what they might say, or prove, would be no excuse for his denying on a solemn declaration instead of an oath, that he had never given *any* evidence before the deputy magistrate, I ruled that the case must go on without the fresh witnesses. Two witnesses named by the prisoner, when committed and entered in the calendar, were then examined, and deposed to the prisoner being beat by some peadas ; but their names they could not tell. The case was then postponed till the next trial was concluded, when the jury were informed that all they had to decide was if the prisoner had or had not given a deposition before the deputy magistrate of Pubna at Dulai, on the 27th April, and whether his denial before the joint magistrate, on the 4th of July, was or was not deliberate perjury, when they unanimously brought in a verdict of guilty of perjury ; and entirely concurring in the finding, I have sentenced him to five (5) years' imprisonment with labor and irons. It is impossible for me to state why he denied his former deposition ; he may have been tampered with, but as his wife (the *teterrima causa*, if there is any truth at all in the other charge) is in the employ of the zemindar charged with killing, or causing the death of *her* paramour, it is possible that the reason for his retracting what he said was through fear of the consequences to his wife ; but no assignable cause can be given with reference to his plea and defence. That the court may judge of the statements made on the two dates, a copy of the deposition is enclosed ; an interval of more than two months elapsed before the cross-examination of the witnesses took place by the joint magistrate, and then I believe, at the instance of a barrister of the Supreme Court, retained by the party accused of the murder of a person, also named Needhoo.

TRIAL NO. 18.—The remarks in the preceding case, *mutatis mutandis*, apply to this, and the same jury finding him guilty

of perjury, I have, concurring entirely in the verdict, sentenced the prisoner to five (5) years' imprisonment with labor and irons. As in the other case, it is impossible for me to say what was the motive for his retracting what he said—his mother and sister are both in the employ of the zemindar charged with murder—a copy of his deposition is enclosed. It contains startling revelations regarding the mode adopted, for the removal of the body of the person alleged to have been murdered, or whose death was caused by the beating he received.

Sentence passed by the lower court.—Five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—This prisoner and Needhoo (No. 17) are convicted of perjury, having sworn before the acting joint magistrate, on 4th July last, that they did not depose before the acting deputy magistrate on the 27th April in a case of murder under investigation before him, to the effect that the party charged, Azeemooddeen, himself beat and also ordered Needhoo to be beaten, in consequence of which he died. The mohurir who wrote the depositions, and another omlah who administered the oath to them on the occasion, have sworn to the fact. They repudiated before the acting joint-magistrate those depositions on the 4th July. It is not material to prove what was the result in the case of charge of murder, or to establish which of the depositions may have been true. It is enough that two contrary depositions, material to the issue of the charge against Azeemooddeen, have been given by the prisoners, the result of which would have been either the acquittal of a guilty man or the punishment of an innocent one. I see no reason to interfere with the sentence.

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Case of
NEEDHOO
SULEKH and
another.

PRESENT :
SIR R. BARLOW, BART. Judge.

MR. J. P. HAMPTON AND GOVERNMENT
versus
DEWANEE SHEIKH.

MOORSHEDA-

B.A.D.

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September 28.

Case of
DEWANEE
SHEIKH.

Prisoner
convicted of
riotously as-
sembling and
attacking a
house, in which
he was wound-
ed severely,
sentenced to
two years' im-
prisonment.
Appeal re-
jected.

CRIME CHARGED.—1st count, having, on the 26th September 1852, illegally and riotously assembled and attacked the premises of the prosecutor Mr. J. P. Hampton, and plundered the house of one Ajaib Singh, the jemadar of the said prosecutor, Mr. J. P. Hampton ; 2nd count, having illegally and riotously assembled, and a second time attacked the premises of the prosecutor, Mr. J. P. Hampton, during which attack Monshada, thannah burkundauz, was wounded.

CRIME ESTABLISHED.—1st count, illegally and riotously assembled and attacked the premises of the prosecutor and plundered the house of his jemadar ; 2nd count, illegally and riotously assembled, and a second time attacked the premises of the prosecutor, during which attack Monshada, thannah burkundauz, was wounded.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 2nd April 1853.

Remarks by the sessions judge.—On the 26th September 1852, an assemblage of men attacked the factory of Mr. J. P. Hampton at Patkabaree and plundered the house of Ajaib Singh, jemadar. On the same day, at about 12 A.M., 3,000 or 4,000 men attacked the factory, in which attack one Moonshada, police burkundauz, was wounded, and on the people on the part of Mr. Hampton opposing the rioters, they went away. From the evidence of the eye-witnesses to the fact, it was proved that the prisoner was present at the attack, and from his own answer that he was wounded at the time. He states that he went to the spot and desired the rioters to desist, but of this there is no proof. The assessors, who sat on the trial, considered the prisoner guilty, in which finding I concurred ; but as the prisoner had been very severely wounded, one arm being rendered helpless for life, a mitigated sentence was passed, as stated in the proper column.

Sentence passed by the lower court.—Two (2) years' imprisonment without labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—It is quite improbable that the prisoner, a man of no influence, should have been acting the part which he alleges in his defence he was taking, upon the occasion of the

riot in which the prisoner himself was wounded, amongst others. The evidence he has caused to be taken in his defence is by no means in his favor; the witnesses plead total ignorance of the matter in question.

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September 28.
Case of
DEWANEH
SHEIKH.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

KASIEENATII SHAHA AND GOVERNMENT

versus

BEEROO SHEIKH.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor Kasheenath Shaha, from which property to the value of Company's rupees 118-6 was plundered; 2nd count, knowingly receiving and possessing the plundered property; 3rd count, privity before and after the fact.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorsheabad.

Tried before Mr. D. J. Money, sessions judge of Moorsheabad, on the 15th July 1853.

Remarks by the sessions judge.—On the 6th June 1853, about ten or fifteen dacoits attacked the house of the prosecutor, and having broken open the chests, &c., plundered property to the value of rupees 118-6. The next day, in the morning, when the prisoner was proceeding along a bye-road, near the village, in which Mottoor was the chowkeedar, and about six miles distant from the village of the prosecutor, he was observed by Goojrukh Sheikh, Mottoor Chowkeedar, Fakir Chand Rajbungsee and Gungaram Majhee, and arrested by them on suspicion with a portion of the plundered property numbered 1 and 2. He was afterwards made over by them to the darogah of *thannah* Sootee, before whom he confessed that he joined in the commission of the dacoity; and this confession was repeated before the magistrate. From the evidence of the witnesses to the apprehension and to the confession of the prisoner before the *darogah* and the magistrate, it is clearly proved that he was arrested with the property in his possession and that his confession was entirely voluntary. One of the two articles, a *jhutka* (a kind of silver ornament,) which was found upon him, was not mentioned in the list of the property plundered, which was first given by the prosecutor, but the other article was mentioned in that list. From the evidence adduced with regard to the identity of the property,

MOORSHEADA-
BAD.

1853.

September 29.
Case of
BEEROO
SHEIKH.

Prisoner
convicted of
dacoity, sent-
enced to eight
years' impris-
onment. Ap-
peal rejected.

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it was proved that the above articles belonged to the prosecutor.

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Case of
BEEROO
SHEIKH.

The prisoner, in his defence before the sessions judge, stated that he did not commit the dacoity, and that the property in question was found by him on the road. The sessions judge convicted the prisoner of dacoity, and believing it to be the prisoner's first offence, sentenced him as stated in the proper column. The property found upon the prisoner was ordered to be given to the prosecutor, on his filing a receipt for the same, and for the realization of the value of the remaining plundered property of the prosecutor, the prisoner has been fined to that extent and his property ordered to be attached and sold, after the expiration of the period allowed for appeal, and the proceeds thereof to be paid to the prosecutor.

Sentence passed by the lower court.—Eight (8) years' imprisonment, with labor and irons, and a compensation of rupees 117-10-6, under Act. XVI. of 1850, to be awarded to the prosecutor.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—The prisoner was arrested on suspicion, as being unwilling to give an account of himself, and handed over to the thannah authorities. To them he confessed that he had, on the previous night, participated in a dacoity, and that some property found on him was a part of the proceeds. This story he repeated to the magistrate at some length afterwards, but at the sessions declared the property found had been picked up by him on the road. In appeal, he tells a rambling story of having been compelled by a gang of dacoits to accompany them, until he, with difficulty and at some risk, effected his escape. As his confessions have the stamp of having been voluntarily given, and the property found upon him has been identified by the prosecutor and his witnesses, I uphold the conviction and sentence passed upon the prisoner.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT

versus

SREEBUN BYSTUBBEE.

CRIME CHARGED.—Wilful murder of one Gungadbur *alias* Gungaram, brother of the prosecutor Nudiarchand Tamoolee.

Committing Officer.—Captain G. N. Oakes, first class assistant to the governor-general's agent at Manbroom.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 19th August 1853.

Remarks by the deputy commissioner.—The Government is prosecutor in this case.

The prisoner pleads *not guilty*.

No. 1 witness, Gunnes Mahto, heard the prisoner confess that she had murdered Gungaram; proves the record of the inquest; knows that the prisoner cohabited with the deceased since *Cheyt* last; does not know that they ever quarrelled. The body of deceased lay in the street. The wounds on it were inflicted with the edge of an axe.

No. 2, witness Bheem Mahto, about midnight, on, it may be, the 20th *Bysakh* last, heard the prisoner making a noise, went and asked her what was the matter, she said that some people had come. Witness then called some of the villagers, and, on their coming, found Gungadbur lying outside his door and still alive. Information was sent to the police, and when the police officer came, the prisoner confessed that she had murdered the deceased. The prisoner and deceased had not quarrelled that day. The deceased was unable to speak. His tongue was cut out. He died at dawn. The prisoner sat near, but did not speak. Witness did not tell the police officer that he had heard in the prisoner's house a noise like beating cattle. The deceased was very poor. The axe now in court was his. There was no light in the house. There was some blood on the prisoner's clothes.

No. 3, witness Luckheeram, corroborates the statement of the preceding witness.

No. 4, witness Dymallee, and No. 5, Shcikh Nazeer.—These prove the confession of the prisoner before the principal assistant.

The confession of the prisoner before the police officers is to the effect, that about the end of the month of *Cheyt* last, the deceased took her to live with him. He watched her continually and always kept her with him. Three days ago she went to bathe and made some delay. On her return, he

HAZARE-BAGH.

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Case ofSREEBUN
BYSTUBBEE.

Prisoner convicted of the wilful murder of the man with whom she cohabited, sentenced to imprisonment for life.

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Case of
SREEBUN
BYSTUBBEE.

taxed her with misbehaviour, and at night he again spoke abusively on this subject, and in passion struck her with an axe. She took it from him, and kept it at hand. He then lay down on a small cot, and while he slept prisoner took the axe and struck him two blows with it. He got up, ran into the street and fell down. Prisoner made outcry, and when people came, she told them that three men had come to the house and wounded the deceased.

The confession of the prisoner before the principal assistant is to the same effect.

No. 6, witness Doobraj Mahto, corroborates the evidence of the witnesses Nos. 2 and 3. While the deceased survived, the prisoner did not attend on, or endeavour to assist him in any way.

No. 7, witness Burjoo Mahto, No. 8, witness Jeetoo Lyah, and No. 9, witness Juggernath Bhoomij.—These corroborate generally the foregoing evidence.

No. 10, witness Reedoy Tamoolee, aged about nine years, son of the deceased Gungaram Tamoolee:—

Question.—What will happen if one speak untruth?

Answer.—He will go to hell.

Question.—Do you know who is Eshwar?

Answer.—Eshwar is Eshwar.

Question.—Will Eshwar be pleased or displeased if untruth be spoken?

Answer.—He will be displeased.

The witness is now sworn. States that he was not at home on the night of the murder. The axe now in court belonged to his father. The prisoner has lived with his father for about a month. His father had no disputes with her.

The prisoner in her defence says, that she did not murder the deceased. She was sleeping inside the house, and deceased slept in. Prisoner does not know who killed him. Her first confession was extorted by beating. Prisoner has a wound on her head, it was inflicted by some one on the night of the murder. It was dark and she could not see who did it.

The jury, whose names* and occupations are entered below, find the prisoner guilty as charged.

I see no reason to doubt the truth of the prisoner's confessions. They are confirmed by the attendant circumstances of her conduct at the time, and of the bloody weapon, a household instrument, being found on the spot; but these circumstances, independent of the confession, would not afford any considerable proof, and the confession must be taken as it stands with the justification of a prior assault by the deceased.

The wound, a slight one, on the prisoner's head, was indeed mentioned at the first and was noticed at the inquest; therefore, I am of opinion, that in this case the extreme penalty may be remitted, and I accordingly beg to recommend that the prisoner be sentenced to imprisonment for life, with labor suited to her sex.

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Case of
SRREBUN
BYSTUBBLE.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The prisoner, by her confessions, committed the deed, while her paramour, the deceased, was asleep. She had been quarrelling with him during the day, and he accused her of intimacy with some one else. The same night further altercation took place and deceased gave her a blow with a *koodalee* or axe, which she took up and kept by her. She states in the mofussil that words having passed, deceased went to sleep and she twice wounded him with the axe, in consequence of which he died.

In the foudarce court she stated that deceased had beaten her during the day, and again at night wounded her with the axe when she was asleep. She protested, but he said nothing, and went to sleep; she then gave him the cuts with the axe on his face, of which he died in the morning. Taking the most lenient view of this case, and adopting the reasons urged by the deputy commissioner for a mitigated sentence, the Court confirm that sentence. The prisoner will be imprisoned for life, with labor suited to her sex.

PRESENT :

J. R. COLVIN, Esq., Judge.

RAMBHOOM NAE AND GOVERNMENT

versus

MUHGOO AHEER ALIAS BOODH AHEER.

SHAHABAD.

1853.

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Case of

MUHGOO

AHEER alias

BOODH

AHEER.

Prisoner

convicted by

the sessions

judge of culpa-

ble homicide,

sentenced to

five years' im-

prisonment.

In appeal

conviction al-

tered to one of

severe wound-

ing. Sentence

upheld.

CRIME CHARGED.—1st count, wilful murder of Sew Sahoy Roy, and 2nd count, accomplice in the wounding of Singur Roy, Mosafur Roy and Sumput Roy.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 7th April 1853.

Remarks by the sessions judge.—The circumstances of this case were thus detailed in the letter of Mr. Brownlow, addressed to the Sudder Nizamut Adawlut on the 31st March 1849, No. 49 :—

“Singur Roy, one of the individuals wounded in this case, was cutting grass in his field on Sunday the 7th January, when at about noon, a number of armed men assembled from the adjacent villages and a desperate row commenced, which ended in Sew Sahoy, the cousin of the prosecutor, being so severely maltreated, that he died from the effects of the blows he received on the following morning; there were others also who were wounded on the occasion. The cause of the quarrel is involved in some mystery, for there appears to be no feud whatever regarding the particular plot of land from which the grass was being cut, nor indeed is any apparent reason assigned for the tumult and its consequences.

“Twelve eye-witnesses have deposed before this court, and from their testimony we gather that of those present the prisoners Atwa Misser and Sree Misser were actively engaged in castigating Sew Sahoy, and that Adeec Misser and Bandhajee Misser were the commandants, &c., on the occasion; the others, Boodhun Aheer, Dodh Aheer, Shewdial Misser, Noseeb Misser and Babooram Misser, inclusive, were present, aiding and abetting.

“The inquest paper discloses a number of wounds on the head, legs and fingers of the deceased. He was quite well before the row, and appears to have been about twenty-nine years of age.”

The inaccurate wording of the charge and other irregularities were animadverted on by the Sudder Court, in their reply to the judge's reference, but as the present is a supplementary

calendar and trials have been thrice held under it as it stands, I have not thought fit to direct its amendment, though it is manifestly incorrect.

The prisoner now before the court eluded pursuit till the present time, when he was arrested in the act of committing a burglary, for which he has been convicted and is now in jail.

His name was mentioned throughout the former trial as the party who struck the deceased. His participation in the outrage is clearly established, both as regards the homicide of Sew Sahoy and the wounding of the other individuals.

The verdict of the assessors finds the prisoner guilty of the first count of the indictment.

The prisoner offers no defence.

Sentence passed by the lower court.—To be imprisoned with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin.)—The appeal of the prisoner is on merely vague and irrelevant grounds. There can be no doubt—he having been named as such from the first by the witnesses who were examined on the former trial in 1849, as well as on the present trial—of his guilt as a principal in the violent outrage on Sew Sahoy Roy. I uphold the sentence passed by the sessions judge, but, on the grounds stated in my order on the former trial, alter the conviction from “culpable homicide,” to the “severe wounding of Sew Sahoy Roy.”

1853.
September 29.

Case of
MUNGOO
AHEER alias
BOODH
AHEER.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

SODHUN MUHTOR AND GOVERNMENT

versus

PURNATH CHOWDREE (No. 1) AND KHEMUN (No. 2.)

BHAGUL-
PORE.
—
1853.

September 29.

Case of
PURNATH
CHOWDREE
and KHE-
MUN.

Two prisoners convicted of incendiarism, sentenced by the sessions judge, one to five years' imprisonment, and the other to one year's imprisonment. Appeal rejected.

CRIME CHARGED.—Incendiarism, (purposely and with pre-meditation, destroying grain stored in a *khullean*, with a view to injury of opposing *malika* and intimidation of his immediate cultivators.)

CRIME ESTABLISHED.—No. 1, Incendiarism ; No. 2, being accomplice in the above.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 18th July 1853.

Remarks by the sessions judge.—Sodhun, the prosecutor, cultivates 51 beegahs in *mouza* Kuheempore, on a *pottah* from Burma Chowdree and others. The prisoners are *ex-maliks* and ryots of the same. On the day in question, in the afternoon, prosecutor was in his *khullean*, where a quantity of mustard-plant in sheaf was stored. The two prisoners and others, in all some twenty-five men, came with swords and *lattees* and fire in their hands and set fire to the mustard-plant. Prosecutor, on their advance, ran away, fearful of being maltreated. The whole of the mustard-seed and the small watching hut attached to the *khullean* were burnt. The prisoner Purnath gave the order, one Bhatoo (absconded) set fire to the mustard, Khemun was one of the party, but not actively engaged. The evidence of prosecutor and the three eye-witnesses is very consistent on these points. There was some slight contradiction as to from which point of the compass Bhatoo applied the fire, but I am convinced that this arose from misconception of the question. Prosecutor's assertion, that there were several other *khulleans* in danger from this fire is not borne out by any of the witnesses. The mustard plant burnt was worth from 100 to 150 rupees. Khemun (prisoner No. 2) made a simultaneous application to the thannah, stating that the mustard burnt was his and that Burma Chowdree's men had set it on fire. Witnesses Nos. 1, 2 and 3 depose to Sodhun having cultivated his land for the last three years.

Purnath (prisoner No. 1) states, that the land in question is Government land, held by himself unassessed ; that he had applied for the settlement, and in the mean time given 200 beegahs each to Khemun and one Rugobur on a *bhaolee* lease. "In the month of Phagoon, the produce being cut was stored in

our *khullean*, Rugobur's share was thrashed out and divided, Khemun's was in sheaf, when Burma Dutt's men, some 200, came and burnt it." Has witnesses to prove these assertions.

Khemun (prisoner No. 2) tells the same story.

The seven witnesses, called for the defence, speak generally to prisoners' having some cultivation on the *deara*, but one and all deny any knowledge of the burning by Burma Dutt's people.

The jury bring in a verdict of guilty against both the prisoners, in which I concur.

This is one of the many cases arising from conflicting claims to alluvial lands; the prisoners and their party, though long ago sold out of the *oopuriac* lands, will not surrender their claim to *deara* lands, formed subsequent to their dispossession of the main estate; the proprietors assert their possession by distraint of crops; the *ex-maliks* retaliate on the stacked produce of the proprietors and their consenting ryots. There can be no doubt of the guilt of the prisoners in this instance, the fact is proved on the clearest evidence and the motive is at once apparent. Purnath (prisoner No. 1,) is especially deserving punishment, as a leader and instigator in the outrage; Khemun is an infirm old man, of a much lower class, and was not actively engaged in the burning, I look upon him as a mere tool of Purnath Chowdree.

I convict Purnath of a pre-meditated act of incendiaryism and sentence him to five (5) years' imprisonment, with labor in irons.

Khemun is convicted of being an accomplice in the same act, but on account of his age and infirmity, sentenced only to one (1) year's imprisonment with labor, without irons.

Remarks by the Nizamut Adawluto—(Present: Mr. H. T. Raikes.)—The prisoners admit that the mustard stored in the *khullean* was wilfully set fire to and destroyed, but allege they were not the incendiaries. The evidence of the eye-witnesses, however, in whose statements the sessions judge has placed the fullest reliance, criminales the prisoners, as remarked by the sessions judge, to the extent of having instigated the crime in the case of Purnath, and of being an accomplice in the same in that of Khemun; and as the defence entirely fails, I see no reason to interfere with the sentence passed on each of them by the sessions judge.

1853.

September 29.

Case of
PURNATH
CHOWDREE
and KHE-
MUN.

PRESENT :

H. T. RAIKES, Esq., *Officialating Judge.*

GOVERNMENT AND BYKANT JOGEE

versus

NUDDEARCHUND HAREE (No. 3,) MANICK HAREE (No. 6 APPELLANT,) AND DASSURUTH HAREE (No. 7)

BEERBHOOM.

1853.

September 29.
Case of
MANICK HAREE.

Prisoner convicted as an accessory before the fact, in a case of dacoity with slight wounding, sentenced by the sessions judge to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, prisoners Nos. 6 and 7, dacoity attended with slight wounding committed in the house of Bykunt Jogee, prosecutor, from whence property valued at rupees 62-3 was plundered ; 2nd count, prisoner No. 3, knowingly receiving property acquired by committing the above-mentioned dacoity, and 3rd count, prisoners Nos. 6 and 7, privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—Prisoner No. 3, of dacoity attended with slight wounding ; prisoner No. 6, of being an accessory before the fact of dacoity with slight wounding, and prisoner No. 7, of privity to dacoity with slight wounding.

Committing Officer.—Moulvee Fyzoollah, law officer, with full magisterial powers.

Tried before Mr. R. B. Garrett, sessions judge of Beerbboom, on the 18th July 1853.

Remarks by the sessions judge.—The prosecutor's house was attacked by a gang of dacoits, on the night of 16th May 1853, and plundered of property valued at Rupees 62-3.

The prisoner Nuddearchund Haree was knocked down and captured, just as he was escaping from prosecutor's house after the alarm was given. He confessed both in the mofussil and before the magistrate. The prisoner Manick Haree confessed before the darogah and before the magistrate, that he was present when the gang assembled, preparatory to their setting out for the prosecutor's village, but he denies having accompanied them, though there is good reason for believing he was a principal in the crime. The prisoner Nuddearchund, mentioned his name as being one of the party. The prisoner Dassuruth Haree, admitted in the mofussil, that he was aware that his son Nuddearchund had gone to commit the dacoity, and indeed he must necessarily have been so.

The defence of the prisoners and the evidence of their witnesses tended, in no degree, to throw a doubt upon the satisfactory proof of their guilt. I therefore convict prisoner No. 3, Nuddearchund, of dacoity, attended with slight wounding, and sentence him to ten (10) years' imprisonment ; prisoner No. 6, of being an accessory before the fact, and sentence him to seven (7) years' imprisonment, and prisoner No. 7, of

privity to dacoity, and sentence him to five (5) years' imprisonment, all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner confessed both to the darogah and before the magistrate, that he was with the gang, though he denies having accompanied them in the expedition to rob the prosecutor's house. The sessions judge has convicted him of being an accessory before the fact. I see no reason to interfere with the conviction.

1853.

September 29.
Case of
MANICK
HAREE.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND INDEE NARAIN CHOW-
KEEDAR

versus

RAJCHURN CHUNG CHOWKEEDAR.

CRIME CHARGED.—1st count, dacoity and plunder of property, value rupees 49-8, while employed as village police chowkeedar, and 2nd count, having in his possession a part of the plundered property, knowing it to have been feloniously acquired by dacoity.

CRIME ESTABLISHED.—Dacoity and having in his possession plundered property, knowing it to have been acquired by dacoity.

Committing Officer.—Mr. Edward Jenkins, magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 21st July 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with dacoity and receiving, and was arrested on the confession of one Rajoo Chung, who was released by the magistrate. As soon as he was secured, the police searched his house and found two articles of the plundered property, a brass plate (*thali*) and a pair of anklets (*mul.*) The former was concealed under a heap of grain covered over with a plank, and the latter cut or broken into six pieces, dug up from the floor of his house at the depth of about a foot. As soon as these convincing proofs of his guilt were brought to light, he made a confession of crime and showed what part he had taken in the affair and how he had disposed of the booty, admitting that he had cut the silver ornaments into pieces to admit of their being contained in the tin box in which they were found. The confession of the prisoner was verified by the darogah and mohurir, who were officially engaged in

24-PERGUN-
NAHS.

1853.

September 29.
Case of
RAJCHURN
CHUNG
Chowkeedar.

Prisoner, a village watchman, convicted of dacoity, and of having the plundered property in his possession, sentenced by the sessions judge to sixteen years' imprisonment. Appeal rejected.

1853.

September 29.

Case of
RAJCHURN
CHUNG
Chowkeedar.

taking it, and the evidence is complete both as to the finding and identity of the property. The prisoner denied the charge before the magistrate and called witnesses to prove that the property found in his house belonged to him, but those witnesses failed altogether to corroborate his plea. His defence before this court was precisely similar, with the like result as to proof. He was a village watchman when he committed the dacoity, and deserves no consideration.

Sentence passed by the lower court.—To be imprisoned for fourteen (14) years, and in lieu of corporal punishment for two (2) years more, in all sixteen (16) years, with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoner has appealed, but upon no tangible ground. I see no reason to question the conviction. His confession before the police is satisfactorily proved and is corroborated by the finding of the stolen property concealed in his house. I reject the appeal.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*GOVERNMENT AND HUCKANEE
versus

RAJOO CHUNG.

24-PERGUNNAHS.

1853.

September 29.

Case of

RAJOO

CHUNG.

Prisoner convicted as an accomplice in an attempt to commit burglary attended with wounding, sentenced by the sessions judge to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Attempted burglary attended with violence committed on the person of Hessamuddee, brother-in-law of the prosecutor.

CRIME ESTABLISHED.—Accomplice in an attempt to commit burglary, attended with wounding.

Committing Officer.—Mr. Edward Jenkins, magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 22nd July 1853.

Remarks by the officiating additional sessions judge.—The offence with which the prisoner is charged was committed on the 9th May 1850, and he has ever since eluded pursuit. His accomplice, by name Nuju, was committed per calendar No. 2, of June 1850, and convicted and sentenced by the zillah sessions court. The evidence that convicted Nuju equally criminales the prisoner and goes to show that a burlarious attempt to break into the house of the prosecutor, Golam Huq, was made, but frustrated by the timely arrival of the witnesses, who got information of the movements of the robbers from one of their own body, Sheikh Kinu, who having occasion to go out at night saw them employed in the

work of cutting the wall, and informed the rest. They at once proceeded to the spot, but the witness, Hessamuddee got there first and saw some five or six persons sitting together, the prisoner among them, and Nuju digging the wall with a crow-bar. On his challenge, they all dispersed and fled, and he succeeded, after some difficulty, in arresting Nuju, who struggled hard to free himself from him, and failing to do so, called the prisoner loudly by name to come to his rescue. The prisoner came, and taking the implement of house-breaking out of Nuju's hand, (applied two blows to him, Hessamuddee,) one on the arm, to induce him to relax his hold, and the other on the head, which caused him to fall down senseless, on which both prisoners escaped. The arrest of Nuju by Hessamuddee, and his rescue by the prisoner after wounding Hessamuddee, in the manner described, are sworn to by the other witnesses for the prosecution, whose statements on the trial agree in all essential points with the evidence given by them in Nuju's case three years ago, though there are of course some discordances between the two depositions, but none of a nature at all to shake or call in question the credibility of the testimony. The prisoner pleads absence from Bengal at the time of the occurrence, and calls witnesses to prove that he eloped with a dancing girl about five years ago and only returned from the upper provinces a few days before his apprehension. His witnesses speak to the fact of the elopement, but do not give any specific information as to his whereabouts during the *interim*. The *futwa* convicts of complicity in an attempt to commit burglary, on violent presumption and of severely wounding the witness Hessamuddee on full legal proof, and declares the prisoner liable to *tazeer*, and I concur in the finding. The prisoner is a man of notoriously bad character and has twice been named as concerned in dacoity since his present accusation, on the last of which occasion he was arrested, disguised as a woman and in a state of inebriety.

Sentence passed by the lower court.—Imprisonment with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner's appeal rests on the plea urged on the trial, *viz.*, that he was absent from Bengal at the time of the occurrence. The evidence against the prisoner is clear and convincing. I reject the appeal.

1853.

September 29.
Case of
RAJOO
CHUNG.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

SONARAM SINGH ALIAS GOUR SINGH (No. 4 APPELLANT) AND MUSST. KOROONA DASEA (No. 5.)

SYLHET.

1853.

September 29.

Case of
SONARAM
SINGH alias
GOUR SINGH
and MUSST.
KOROONA
DASEA.

Prisoner
convicted as an
accomplice in
an culpable
homicide, in an
attempt to pro-
cure abortion,
sentenced to
three years'
imprisonment
by the sessions
judge. Appeal
rejected.

CRIME CHARGED.—1st count, with the culpable homicide of Musst. Eshore Dasea by administering drugs to produce abortion, and 2nd count, with privity to the above crime.

CRIME ESTABLISHED.—Accomplice in the culpable homicide.

Committing Officer.—Mr. T. P. Larkins, joint magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 24th June 1853.

Remarks by the sessions judge.—Katoo Chowkeedar hearing that the deceased was ill went to see her, and was told by her mother, Musst. Koroona Dasea, that she had fever, and that Sonaram had given her medicine, but his suspicions being aroused, he reported the circumstances to his zemindars, who directed him to go to the thannah. The only evidence against the prisoners is their own confessions, made voluntarily before the darogah and magistrate. Sonaram stated before the darogah, that he heard from Koroona that the monthly courses of the deceased had ceased and that he saw Koroona procure some medicine from a Mussulman, which she administered to the deceased in his presence. That this remedy had no effect, and that the deceased accompanied him to the house of Beva Thakoor, where he left her. But the next day Koroona told him that a woman had applied a *lut* which had the desired effect. That he told her she had not done well and then took the deceased home with him, but she complained of pain, when Koroona gave her some medicine, but that she died the same night.

This confession, with a little variation, he repeated before the magistrate, and before this court he pleaded *guilty* to privity.

Musst. Koroona stated before the darogah, that the deceased occasionally lived with the prisoner Sonaram, and that one day she came to her (Koroona's) house and complained of fever, and on being questioned, admitted that her usual courses had ceased and that the prisoner therefore knew that she was pregnant; that Gour Singh took her away again, and that one day when she went to see her, she saw Gour Singh prepare and administer a pill to the deceased, with the

view, as he said, of causing her monthly courses to return, but that two or three days afterwards the deceased died. Before the magistrate, she stated further, that the deceased had criminal connexion with the prisoner Gour Singh.

Musst. Noaye Dasea deposes to seeing the prisoner Koroona administer some medicine to the deceased, in consequence of her complaining of pain, but the object of it she does not know.

The civil surgeon I did not call, as he stated in his letter to the magistrate, that though the womb of the deceased appeared to have been in a state of inflammation, the parts were so decomposed as to render it impossible for him to state decidedly the cause of death.

From the *sooruthal* it may be inferred that miscarriage had taken place.

The jury finds the prisoners *guilty* of being accomplices in the culpable homicide of the deceased, by administering drugs to her to procure abortion, and in this verdict I acquiesce.

Sentence passed by the lower court.—Three (3) years' imprisonment without irons, and to pay a fine of rupees (20) twenty, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner Sonaram has appealed; he pleads that the deceased died from fever, but he adduced no evidence to prove this, and on the trial pleaded *guilty* to the homicide after the fact. The circumstantial evidence clearly establishes the fact of the deceased having died from the effects of the medicine, administered to her to procure abortion, and the prisoner confesses that the drug was administered to her in his presence by the other prisoner for that purpose. I see no reason to interfere, but the sentence I would remark is a very lenient one.

1853.

September 29.

Case of
SONARAM
SINGH alias
GOUR SINGH
and MUSST.
KOROONA
DASEA.

PRESENT :
SIR R. BARLOW, BART., Judge.

GOOROOCHURN KULLOO AND GOVERNMENT
versus
SREENIBAS.

HAZAREE-
BAUGH.

1853.

September 30.

Case of
SREENIBAS.

Prisoner
convicted of
the wilful
murder of a
child, under a
professed fit of
inspiration,
sentenced to
transportation
for life.

CRIME CHARGED.—Wilful murder of Shamee Kullooonee.

Committing Officer.—Captain G. N. Oakes, first class assistant to the governor general's agent at Manbhoom.

Tried before Major J. Hannington, deputy commissioner of Hazareebaugh, on the 2nd September 1853.

Remarks by the deputy commissioner.—The prosecutor states, that one afternoon in Sawun last, his daughter, Shamee, a child, was bringing water from a pond, and being pursued by the prisoner, was running away screaming, when prosecutor hearing the noise ran out and asked what was the matter, and then saw the prisoner Sreenibas cut her down with an axe. She died on the spot, and the prisoner was immediately taken into custody by Khetoo Moe and others. The prisoner said "Oh ho, I have killed your daughter to-day. Kill you me!" He is a respectable man and has no quarrel with prosecutor.

The prisoner pleads *not guilty*.

No. 1, witness Komul Baug.—On the evening of the 4th Sawun last, the prosecutor's daughter was bringing water from the pond and was then cut down by the prisoner with an axe. Witness did not see the blows struck, but saw the prisoner standing with the axe in his hand, and the child Shamee lying on the ground bleeding. Witness and others persuaded the prisoner to give up the axe and then took him into custody. Prisoner is a quiet man. Only one blow was struck. Prisoner said that fate had ordered it. Two or three years ago, the prisoner, after the death of his mother, was disturbed in his mind. His father then took care of him. No report of this was made at the time to the police.

No. 2, witness Khetoo Moe.—As the preceding witness. The prisoner was quite sane at the time of the murder.

No. 3, witness Shatoo Chowkeedar.—To the same effect. The prisoner at the time of the murder said, "I have done wrong to kill the child, but let me off this time."

No. 4, witness Nuffur Mundul, proves the confession of the prisoner before the police officer.

The confession of the prisoner is to the following effect:—

Yesterday, having eaten and drank, I was sitting in the house, when suddenly a voice on the wind said to me, "your uncles have taken your sister Aunie to bury her in the forest go you there," wherefore, taking this axe in my hand, I went to the forest, and after a little being inspired, I heard a spirit

voice in the wind say, 'Cut off the heads of your brethren, or else take off any one's head.' Then as I went homewards, I met the girl Shamjee coming with water from the pond to her home, and being possessed, I, with this very axe, struck her two or three blows. She fell and died. After a little, Komul Baug and my father Sonatun, and others, whom I do not remember, seized me and took away my axe and bound me. I confessed to them and asked them to save me. Now also I confess voluntarily.

No. 6, witness Juggeshore Shahance, corroborates the evidence of the witnesses Nos. 1 to 3. None dared at first to go near the prisoner; after much coaxing he was apprehended.

No. 7, witness Roop Dass, came after the fact and saw the deceased lying on the ground and the axe beside her. The prisoner said he had done wrong.

No. 8, witness Sonatun Mundul, is the prisoner's father. Prisoner was once out of his mind, when his mother died, now he is sometimes well and at other times he is idle. He does not sleep at night.

The prisoner in his defence says, that he does not know any thing of the murder. The people of his village are all ready to drive him away.

The jury, whose names and occupations are entered below,* find the prisoner guilty as charged.

That the prisoner has committed the murder charged is fully proved, I therefore concur in the verdict of the jury. It only remains to consider the degree of the prisoner's guilt. Except the absurd motive stated in the prisoner's confession, no cause for the murder has been assigned. The deceased was a child, an unmarried girl ten years old, towards whom any ill-will on the part of the prisoner is neither ascribed nor is probable. The prisoner is evidently of sound mind and was so at the time of the murder. His prior insanity is not well made out, but it just gives a colour to the story of an imaginary demoniac possession. We cannot measure the belief of a Hindu respecting such incursions by our own belief in them, but I am not disposed to view cases of this kind with leniency. The immolation of a victim to a sanguinary demon is, I am persuaded, the real motive in many such instances, and the supposed merit of such an action is held to be cheaply purchased by any punishment incurred. The crime is however not so frequent as to require its repression by taking life for life, but of minor punishments the highest is most applicable. I therefore recommend, that the prisoner be sentenced to imprisonment for life, with hard labor in irons in transportation.

1853.

September 30.
Case of
SREENIBAS.

* Maungobind Ghose, mookhtar, Buckernath Mookerjea, mookhtar.

1853.

September 30.
Case of
SREENIDAS.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The charge is fully proved by the prisoner's mofussil confession, by the deposition of the prosecutor who saw the blow inflicted on his daughter which caused instantaneous death, and by the evidence of Khomul Baug, Khetoo Moee and others, who saw him standing over the body with the bloody *tanjee* in his hand, when he said, "Spare me this time." Sonatun, the prisoner's father, in his deposition, raises some suspicion of his sanity, but the other witnesses do not support him. It is difficult to account for the cause of the murder of the child, except in the mode stated by the deputy commissioner. I am willing to give weight to his opinion and to his experience, and therefore confirm the sentence he recommends. The prisoner will be imprisoned for life in transportation with labor and irons.

PRESENT:

SIR R. BARLOW, BART.,
AND
J. R. COLVIN, Esq.,

} Judges.

LUCHMUN MISSER AND GOVERNMENT
versus

BOOLAKI (No. 1) AND GOWREE (No. 2).

PATNA.
1853.
September 30.
Case of
BOOLAKI and GOWREE.

CRIME CHARGED.—1st count, highway robbery with theft of property, valued at rupees 76-5, from the person of the prosecutor; 2nd count, theft of property valued at rupees 76-5, from the person of the prosecutor, and 3rd count, assaulting the prosecutor and snatching from him property valued at rupees 76-5.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna. Tried before Mr. B. J. Colvin, officiating commissioner of Patna, with powers of a sessions judge, on the 23rd August 1853.

Remarks by the officiating commissioner, with powers of a sessions judge.—The prosecutor's statement was, that on the 27th June he had taken 28 Sicca rupees, 3 gold-mohurs and some pice, to the shop of Phuggoo Lal, (witness No. 5,) to change, where he exhibited them. It was not convenient to negotiate the bargain that day, so he took them back home. On his way there, at the mouth of a lane called Chowdree-gully, he says, he was set upon by Boolaki, (prisoner No. 1,) and Gopee and Boolkee (not apprehended,) when Gopee twisted his (the prosecutor's) *doputtah* round his neck, Boolkee held his arms behind and Boolaki extracted the money from his waist, some portion of which, *viz.*, rupees and pice, which fell upon the ground, were picked up by Gowree (prisoner No. 2.) At

Prisoner charged with highway robbery and other counts, acquitted by the Court in conformity to the opinion of the commissioner who tried the case.

this moment, prosecutor's servant who had accompanied him to Phuggoo Lall's, and on his way back was sent for flowers, came up, upon which the three let him go and made off. The prosecutor then sent his servant home and went himself to the thannah, where he reported the circumstance.

The prisoners deny the charge. No. 1 states, that prosecutor has long been at enmity with him, for not selling him some building ground, which he wanted to purchase, and on the evening in question he had renewed his demand, and on refusal threatened to get him into trouble, and taking some pice out of his waist, threw them on the ground, calling out that he was being robbed. No. 2 says, that when he saw the pice thrown down, he picked them up to give to prosecutor, who would not take them. Both prisoners followed the prosecutor to the thannah to contradict the report, which they learned he had gone to make against them.

The prosecutor's witnesses give evidence in support of his statement, but there are certain discrepancies in the evidence as regards the exact locality of the occurrence, with reference to Chowdree Gullee. One witness saying, the attack was within the mouth of the lane, which the prosecutor had turned into, and another that it was to the westward of its entrance, which the prosecutor had passed. To enable us to understand the witnesses' account of the locality, the law officer and I went to the spot, which is in the city of Patna, and we saw the piece of ground* which prisoner No. 1 refuses to sell to prosecutor, the acquisition of which would certainly improve the value of a small piece of land of his adjoining at present, rather small for building on.

There were also discrepancies regarding the place, which those, said to have attacked prosecutor, came from and where they went to. The fact of the enmity existing between him and prisoner No. 1, is established, even by the evidence of witness No. 3, for the prosecution, who says, that the very day of the alleged occurrence, a dispute occurred between them.

The prisoners' witnesses corroborate their defence.

Looking at all the circumstances of the case, more especially to the contradictory evidence on both sides, and to the enmity between the prosecutor and prisoner No. 1, I do not think that the evidence for the prosecution is such as to justify the conviction of the prisoners. Against Gowree, nothing is proved, but that he picked up pice, which he himself delivered at the thannah; but the prosecutor says, he has kept back the rupcös. He gives him, however, a good character.

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Case of
BOOLAKI and
GOWREE.

* The sketch map filed by defendants is an accurate representation of the locality. It will be found in the magistrate's proceedings.

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September 30. The law officer agrees with me in acquitting Gowree. He has therefore been released ; but he convicts Boolaki, whom I would also acquit, of snatching prosecutor's property from his person, and declares him liable to *seasut*. On this account, I refer the case for the Court's orders.

**Case of
BOOLAKI and
GOWREE.**

The magistrate has been ordered to release Boolaki, on security, according to Section VII., Regulation XIV. of 1810, pending the result of this reference.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. R. Colvin.)—The probabilities of this case, the time, place and circumstances set forth, are all against a conviction. The evidence for the prosecution too, is, as the officiating commissioner has observed, contradictory ; and the fact of enmity between prisoner No. 1, and the prosecutor is well established. The lane, where the offence is alleged to have taken place, is described by the prosecutor as lonely and dark ; the night was also dark. It is hardly credible that the witnesses, under such circumstances, should have seen the gold mohurs, rupees and piec, fall from prosecutor's waistband, even though a *chiragh* is stated to have been burning in Gorae Ghuttuck's shop, and to have thrown its rays on the spot. A number of shop-keepers must have been at hand in the bazar, in the main street or road close by, but none of these have given evidence. The two or three witnesses are stated to be strangers, who were accidentally near at the time.

The whole case has strong marks of having been got up falsely against the prisoner, from enmity.

We concur, therefore, with the officiating commissioner, and acquit the prisoner No. 1, Boolaki, he must be released from bail forthwith.

PRESENT:
SIR R. BARLOW, BART., Judge.

MUDDUN MOHUN BHOSE AND GOVERNMENT
versus

ADOO SHEIKH (No. 17,) PORUSOOLLAH SHEIKH
(No. 18) AND DINONATH BHUTTACHARGEA (No.
19 APPELLANT.)

CRIME CHARGED.—1st count, dacoity at the house of Ramruttun Dutt, the maternal uncle of the prosecutor, and plundering therefrom property valued at rupees 221-13-9, on the night of the 5th April 1853, corresponding with the 24th Cheyt 1259, and 2nd count, knowingly receiving portions of the property plundered in the above dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Jessore, Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 2nd June 1853.

Remarks by the sessions judge.—It is in evidence that about ten or twelve persons armed with clubs, &c., and carrying two torches, attacked the house of Ramruttun Dutt, who was absent in Calcutta. On the night of the 5th April, four of them seized and pinioned witnesses Nos. 1 and 3, who were sleeping in the verandah, whilst the rest ransacked the rooms, where the wife and sister-in-law of the owner were. Witness No. 4, (a boy who cannot tell the nature of an oath,) was also in the house.

Witness No. 1 says, he recognised prisoner No. 19, amongst the persons who seized him.

Witness No. 2, a neighbour, says, that hearing a noise, he came out and hid himself in a garden near the Mundulghur, and he also recognised Dinonath prisoner No. 19; plaintiff and witness No. 5, who are also neighbours, testify to the fact of the dacoity as does also the chowkeedar of Paikpara, (witness No. 6,) who, the next day went to the thannah of Singheea, which is about five coss off, with witness No. 1, who gave his deposition.

The darogah's report with the inventory of plundered property is dated 7th April. The magistrate's order theron bears date 9th idem.

Witness No. 13, naib of Fultullah Bazar, (under thannah Noabad,) says, that he and his servant, (witness No. 16,) were going to that bazar from his house, in his boat, on 6th idem, when he saw Dinonath, No. 19, (a released convict,) with other seven persons, seated in a boat near Kistolah Ghaut, (within hail from Fultullah), he suspected them and summoned the chowkeedars, (witnesses Nos. 14 and 15,) of the bazar.

JESSORE.

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Case of
DINONATH
BHUTTA-
CHARGEA.

Prisoner
convicted of
dacoity on
very strong
evidence, sen-
tenced to seven
years' im-
prisonment. Ap-
peal rejected.

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DINONATH
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CHARGEA.

Witnesses Nos. 13 to 16, swear, that when they got near the boat, prisoners Nos. 20 and 21, and Junnojoy (absent) ran away from the boat, and that prisoner No. 21, had a bundle with him. They did not pursue them or ascertain the contents of that bundle, but they seized prisoners Nos. 18 and 19 in the boat, where they found two bundles of clothes, and took them into the bazar intending to send notice to the darogah of Noabad in the morning. They were delayed by a storm which lasted from mid-day throughout the night; prisoner No. 18 acknowledged to them he had committed a dacoity. The next morning prisoner No. 17, came with a note to the naib, witness No. 13, from Bholanath Mitter to get the captives released; but when the jemadar of Singhea, who was searching for the perpetrators of the crime, came thither, they handed the three prisoners and their spoil over to him. Witnesses Nos. 17, 17¹ and 18 testify to this point.

The jemadar took these three prisoners to Fultullah, where prisoners Nos. 17 and 18 confessed to the darogah on 8th idem, and repeated their confession to the magistrate the next day.

The property has been duly identified and the subscribing witnesses bear testimony that the confessions were voluntary.

It is also in evidence that prisoners Nos. 18 and 19, hired the boat (in which they were caught) from witness No. 20, shortly before the dacoity. The prisoners deny their guilt before me; but their denial is not supported by consistent exculpatory evidence.

Prisoner No. 19 has been before imprisoned for theft for three years.

From the evidence for the prosecution, the capture of prisoners Nos. 18 and 19, with the plundered property, in the boat which they had recently hired, and the confession of prisoners Nos. 17 and 18, the crime of dacoity is established against all three prisoners.

I therefore sentence them each to seven years' imprisonment with labor in irons.

Remarks by the Nizamul Adawlut.—(Present : Sir R. Barlow, Bart.)—The prisoner No. 19 has appealed. He was recognized by a servant of prosecutor Dhonee Sheikh, who went immediately to the police thannah and named him as one of the dacoits whom he recognized. The prisoner was also recognized by Munneeroodeen at the time. On the second day after the dacoity, Doorgachurn Mitter, the zemindar's gomashtha, was proceeding in his boat to Fultullah, when he saw the boat on which the prisoner and others were, at the ghaut. He suspected them and caused them to be apprehended on board, when two bundles of clothes and banians,

which prosecutor had sent into the Mofussil to be sold, were found in it and recognized by witness No. 19, who had taken them from Calcutta for that purpose. Witness No. 7 also recognized the same property and a shawl. The prisoner was formerly convicted and sentenced to imprisonment for theft and appears to be a marked man: he pleads *alibi*, but fails in his proof. I confirm the sessions judge's sentence.

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Case of
DINONATH
BHUTTA-
CHARGEA.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND RAMCHAND GHOSE, MOOKH-
TAR ON THE PART OF MESSRS. J. AND R. WATSON,
versus
RAMNARAIN ROY.

CRIME CHARGED.—1st count, the prisoner is charged under Act XIII. of 1850, with embezzlement, in having on the 12th January 1853, when employed as a private servant, in the capacity of gomashta on the part of Messrs. John and Robert Watson, by breach of trust, fraudulently appropriated to his own advantage, the sum of Company's rupees 11-2, and on the 10th February 1853, out of money received by him in advance for expenses of his master, both these sums being falsely entered in the debit side of the *rokur* or Bengalee daily book of the above respective dates as paid in advance on account of Chunam to Heenoo Bhoooya, witness No. 6, and 2nd count, with theft, in having on the 12th January 1853, when employed as a private servant in the capacity of a gomashta on the part of Messrs. John and Robert Watson, by breach of trust, feloniously stolen and fraudulently appropriated to his own advantage, the sum of Company's rupees 11-2, and on the 10th February 1853, Company's rupees 15-12, out of money received by him in advance for expenses of his master, both such sums being falsely entered in the *rokur* or Bengalee daily book of the above respective dates as paid in advance on account of Chunam, to Heenoo Bhoooya, witness No. 6.

CRIME ESTABLISHED.—Embezzlement under Act XIII. of 1850.

Committing Officer.—Mr. George Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 25th August 1853.

Remarks by the sessions judge.—The prisoner is charged with embezzlement of Company's rupees 26-14, to which he pleads *not guilty*. It appears that the prisoner was appointed a gomashta of the indigo factory at Rutnessur, belonging to

MIDNAPORE.

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Case of
RAMNARAIN
ROY.

Prisoner, a gomashta in the employ of an indigo planter, convicted of embezzlement and sentenced to four years' imprisonment.

In appeal sentence reduced to two years' imprisonment.

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Case of
RAMNARAIN
ROY.

the prosecutors J. and R. Watson. On 31st October 1852, between that and 6th March 1853, according to the *rokurs*, marked A and F, and the evidence of the witnesses, Company's rupees 1,876-8-7 were sent to the prisoner for the use of the factory; during this period complaints were made by various parties, (the witness No. 6, Heenoo Bhooya amongst others,) that they had not received from the gomashta, (the prisoner,) the value of articles supplied for the use of the factory, as the *rokur A* showed that they had been paid for; witness No. 2 was deputed to examine the prisoner's accounts; it was found according to *rokur A* that the rupees 1,876-8-7 had been disbursed, but there were no vouchers to support the disbursement of sundry items amounting in aggregate to 166-14-5: a list of these items was then made out, marked C, to which, as also to the *rokur A*, the prisoner affixed his signature in acknowledgement of its correctness and his responsibility for the amount; of the total amount 166-14-5, the magistrate has elected two items to which he limits his investigation and with embezzling which the prisoner is arraigned. According to *rokur A* item in charge, *viz.*: Company's rupees 11-2 and Company's rupees 15-12 were paid to witness No. 6, Heenoo Bhooya, on the 12th January and 10th February 1853 respectively, Heenoo Bhooya, witness No. 6, denies having received either of them, and his evidence is corroborated by the *hat-chitta* duly verified, marked D, given to witness and signed by the prisoner; this *hat-chitta* makes no mention whatever of these two items, and in the receipt book E, also verified, which is the voucher to support the charge in the *rokur A*, there is no signature of the payer Heenoo affixed to item rupees 11-2, said to have been paid to him on 12th January, and the other item 15-12 paid to Heenoo according to the *rokur* on 10th February is not entered at all. The prisoner's defence before the magistrate is tantamount to an admission that he appropriated these items, together with others aggregating 166-14-5; and in this court he urges that all the money remitted to him was expended in the use of the factory, but he is unable to adduce any proof in support of his statement, or in any way to impugn the evidence for the prosecution. The assessors declare the prisoner guilty of the charges preferred against him, and I fully concur in their verdict, and sentence the prisoner as indicated in the statement.

Sentence passed by the lower court.—Imprisonment for four (4) years, and a fine of Company's rupees 26-14, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.—Baboo Sreenuauth Sein appeared for the prisoner; Baboo Sumboonauth Pundit for the prosecution.)

The evidence is sufficient, and the pleader for the prisoner is unable to point out any flaw in the proceedings. I therefore uphold the conviction, but considering that the case is one which might have been disposed of by the magistrate himself, under Act XIII of 1850, as the amount embezzled is only rupees 26-14, I think a sentence of less severity, than that awarded by the sessions judge, will suffice : I accordingly sentence the prisoner to imprisonment for two years, with labor, commutable to a fine of rupees one hundred payable within fifteen days. A fine of rupees 26-14 is also imposed upon the prisoner for recovery of the sum embezzled under Act XVI. of 1850, provided that the amount has not already been paid to Mr. Watson, as would appear to be the case from a petition, dated the 9th May 1853, filed in the magistrate's court.

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Case of
RAMNARAIN
ROY.

PRESENT:

J. R. COLVIN, Esq., Judge.

GOVERNMENT

versus

HULKARA SINGH (No. 2,) BHOOOLIA (No. 3) AND NIJABUT KHAN (No. 4.)

BEHAR.

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Case of
HULKARA
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others.

Two prisoners convicted of culpable homicide, sentenced by the sessions judge to five years' imprisonment, and a third prisoner, convicted as an accomplice, sentenced to seven years' imprisonment. In appeal one prisoner was acquitted. The two others were convicted of privy to murder, and the sentence upheld.

CRIME CHARGED.—Nos. 2 and 3, 1st count, wilful murder of Button Mooshur; 2nd count, beating the said Button Mooshur, from the effects of which he died. No. 4, 1st count, being accomplice in the crime of wilful murder of Button Mooshur; 2nd count, being an accessory before and after the said fact in the said crime, and 3rd count, being privy to the above crime.

CRIME ESTABLISHED.—Nos. 2 and 3, culpable homicide of Button Mooshur, No. 4, being an accomplice in the said crime.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Nowada, with the powers of a magistrate.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 13th June 1853.

Remarks by the sessions judge.—On Tuesday the 22nd March last, Hulkara Singh, (prisoner No. 2,) chowkeedar of Mudder-dhee, followed jemadar Bishen Shac into the Mofussil and reported (No. 1,) that on Sunday evening, Nijabut Khan had called the deceased, Button Mooshur, for some purpose, (*kissi khau wasté*) into the cutcherry, and then at midnight set up the alarm that he had ran away. The next morning, Monday, on the prosecutrix, the deceased's wife, making search for her husband, his suspicions were aroused, and on inquiry, he had ascertained that Nijabut Khan had maltreated the deceased and buried his body somewhere, which, on being questioned, he said was near the cutcherry. Nijabut Khan, (prisoner No. 4,) is resident gomashta and Bhoolia Doosad, (prisoner No. 3,) go-rat of Mudder-dhee. The next day, the 23rd idem, the jemadar reached Mudder-dhee, Nijabut Khan having been previously apprehended in his own house, when the jemadar dug up, inside the walls of a room appertaining to a building then under erection, as a new bazar, within the village, about six *bans* distant from the *cutcherry* and one fathom below the surface, or ground floor of the room, the body of the deceased, which the inquest, No. 4, of the same date, described as having been found in a very decomposed state in the presence of the witnesses Nos. 1 to 7, the jemadar, Bishen Sahae, (witness No. 42) and his attending burkundauzes, Karamut Alee, (witness No. 43,) and Ahmud Alee, (witness No. 44).

The prosecutrix, the deceased's wife, residing at Modab, two miles distant from Mudderdee, the same day complained, that on the afternoon of 20th March last, the deceased, accompanied by Ledoo Mooshur (witness No. 13,) and Mungur Mooshur (witness No. 14,) had taken some iron to be worked up into a hatchet to Jebul *lohar* (witness No. 16,) at Gilowr, Ghat, two miles distant from Modab. This Jebul so far confirmed as reported to him by the women of his house on his return home, he being absent at the time. Ledoo and Mungur deposed, that returning home from Jebul's in company with the deceased, they were set upon by the prisoners and others. Ledoo and Mungur escaped, but the deceased was carried off to Mudderdee in presence of Mungur Doosad, (witness No. 18,) Degwur, of Gilowr ghat. The prosecutrix reported the occurrence to her village authorities, who, the next morning, sent Daboo Chowkeedar (witness No. 12,) with her to make inquiries when, by the way, they met Pirtum Mooshur (witness No. 15,) the deceased's uncle, resident of a village close to Mudderdee, and himself employed in the cutcherry there, who told them the deceased had been murdered.

This witness, Pirtum, was absent before this court, but his testimony before the police and magistrate amounted only to his having got inside the cutcherry and having seen deceased's body lying there, which he did not particularly examine.

Ledoo and Mungur's evidence was taken by the police on 25th March, when the former stated, that on appealing to Mungur Doosad, the Degwur, (witness No. 18,) he remonstrated with Nijabut Khan, who replied that the deceased was his labourer and took him away. Mungur Degwur had been put on his defence by the police the day previous the 24th. No. 12, under a short interrogation as to his having taken the deceased to Mudderdee, he replied "that he did not beat the deceased, but had made him over to Hulkara Singh and he did not know how he had come by his death." On the 29th following, however, before the deputy magistrate, he adopted the tale recognized by Nijabut Khan's defence, and under the deputy magistrate's proceeding of the same date was admitted to give evidence. This original statement and testimony are of a very incomplete, equivocating character, though both recognize the deceased's capture and his having accompanied him to Mudderdee, where making him over to all the prisoners, he returned to his post. Before the deputy magistrate, he deposed that he had found Ibrahim Jolaha, (witness No. 17,) and Keydoo Jolaha, (witness No. 45,) both residents of Mudderdee, and the deceased quarrelling, when he apprehended the deceased and Ledoo (witness No. 13) and

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Mungur (witness No. 14) ran away. Though in his first statement, before the deputy magistrate, he had stated that the deceased had been seized as a labourer; he now deposed that the occurrence had originated in a dispute and exchange of blows between the Mooshurs and Jolahas at a liquor shop. At variance to all this and trinuming with the statement intermediately made by Ibrahim and Keydoo Jolahas, he deposed before this court to its having been a highway robbery, though when questioned if as chowkeedar he had ascertained what the robbed had been plundered of, he replied that Keydoo had never told him, neither did he question him about it.

Ibrahim and Keydoo Jolahas were never forthcoming in the first instance, and not until repeated requisitions by the deputy magistrate. On 28th April following, both then deposed they were returning home from market, when they were attacked by the deceased, Ledoo and Mungur Mooshurs, who beat and plundered Keydoo Jolaha, when Mungur Degwar, (witness No. 18,) coming up, the deceased was captured by him and taken to Mudderdee before Nijabut Khan, who made him over to Hulkara Singh and Bhoolia Doosad, who during the night set up an outcry that the deceased had escaped: so much of his tale has been adopted by all the remaining witnesses, residents of Mudderdee, whether appearing for the prosecution or the defence.

Hulkara Singh, prisoner, acknowledged his having ascertained the deceased's interment, pleads *not guilty*, and asks if so, why he should have been the original informant? He declares the whole village to be under Nijabut Khan's control, who had set up the villagers to depose to the deceased's having been made over to him for which, as more pertinently urged by him, before the deputy magistrate, there could have been no necessity, no occurrence having taken place within his beat. He also set up an *alibi*, weak in itself, and which stands unsupported.

Bhoolia Doosad (Prisoner No. 3,) has always denied the deceased's having been made over to him, or any necessity for it, and has adhered pretty much to the same story of Mungur Degwar (witness No. 18) having brought the deceased to the cutcherry, where afterwards during the evening, returning to the cutcherry, he heard sounds within, and on Nijabut Khan's challenging and on giving his name, Nijabut Khan ordered him to be seized, so he ran off and kept out of the way through fright. He has never called any witnesses.

Nijabut Khan's (prisoner No. 4) defence before the police, 23rd March, meagre in itself and apparently unwillingly given, was extracted from him by an interrogation. He neither

knew who had killed the deceased, nor buried the body where it was found, and accounted for his ignorance, as he was all day in the cutcherry and all night at his dwelling, when the cutcherry was under charge of the chowkeedar, who in collusion with his adversaries, though assigning no intelligible but even contradictory reasons for the same, might have put the body where it was found. Before the deputy magistrate, on the 29th following, he adopted the tale nearly a month afterwards deposed to by Ibrahim and Keydoo Jolahas, accounting at the same time for his having made over the deceased to Hulkara Singh and Bhoolia Doosad from having seen spots of blood on Keydoo's person. In his defence before this court, he adhered to the same tale, calling witnesses, all residents of Mudderdee, who deposed in support of the tale of the deceased having been brought captured to Mudderdee, for having robbed Ibrahim and Keydoo Joolahas, and made over to Hulkara Singh and Bhoolia Doosad, who during the night set up an alarm of his having escaped.

The *futwa* of the law officer, in the absence of any eyewitnesses to the murder, acquits the prisoners on that charge, but with regard to the circumstances of the case and the unsatisfactory nature of the defence set up, convicts Hulkara Singh and Bhoolia Doosad of the culpable homicide and Njabut Khan as accomplice therein, and declares them liable to punishment for the price of blood by *deyut*.

Pirtum's evidence, wanting, and such as it stands on record, defective, with nothing corroborative of it beyond his having informed the prosecutrix and Daboo Chowkeedar (witness No. 12) of the murder, and their testimony in this respect being both inconsistent and contradictory, no reliable evidence is forthcoming as to the manner of the deceased's death. That a foul deed has been brought to light, I entertain not the slightest doubt, but all the circumstances attending it are shrouded in a mystery. It is not improbable every resident of Mudderdee has done his best to uphold, and which the character of the prosecution does not tend to unravel. Both the tale for prosecution and defence must be regarded with distrust. If the deceased's two companions, Keydoo and Mungur Mooshurs are to be believed, then the deceased was most wilfully and maliciously captured and carried off from Gilowr Ghat by the three prisoners and others, which was the last they saw of him alive, as they only again recognized his body, when disinterred at Mudderdee. But neither is their testimony nor character to be depended on to such extent. It is placed beyond doubt by the evidence on both sides, that the deceased had left Mudderdee upwards of three

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years ago, and on Ledoo's own showing, he also had accompanied the deceased to Modab from Mudderdee as alleged, for refusing to give false evidence on part of Goolam Alee Khan, Nijabut Khan's employer, in the disputes between the Mudderdee proprietors and out of revenge for which the prosecutrix says, the deceased was killed. There is a decision of the deputy magistrate of 4th February 1846, acquitting Ledoo and others on accusation of burglary ; it being supposed to have been got up consequent on the disputes between the proprietors of Mudderdee. Ledoo is therein described as being in Golam Alee's employ. However they had been residing at Modah, unmolested by the Mudderdee people the last three years, and all three, *viz.*, the deceased, Ledoo and Mungur Mooshurs resided there together in the same court-yard, yet the prosecutrix under examination with these, her two fellow-lodgers, so palpably contradict each other, it is impossible to believe that Nijabut Khan had in any way, as deposed to by them, threatened the deceased prior to the occurrence, so that any satisfactory proof of the deceased's capture having been maliciously predesigned is wanting. The prisoner, Nijabut Khan, charged these witnesses and also the deceased as notorious bad characters. A subsequent reference with the close of the trial abstract, of which is detailed in the proceedings, showed a most singular connexion between these three persons and also one Gothra, who figures with them in all the cases recorded against them between 1845 and 1852. Ledoo and Gothra were imprisoned three months in a petty theft case in 1845. In September 1852, in the magistrate's court and on some date within deputy magistrate of Nowada's jurisdiction ; the deceased had confessed to having committed two burglaries in company with all three. Though released by the magistrate's proceedings, 30th September 1852, and the deputy magistrate's of 12th October 1852, it is impossible to detect from his different statements and the records, whether he had been persecuted into playing a part in making these confessions, or if so with what object ; but looking at his own and Gothra's various inconsistent statements, or their wilful silence, it is impossible to regard them, except to their disadvantage. All four must have been either very troublesome or very persecuted characters : on the other hand the tale for the defence, as upheld by Nijabut Khan, is no better. The accusation of the deceased having been captured, whilst committing a highway robbery, assisted by Ledoo and Mungur, on Ibrahim and Keydoo Jolahas, is a manifest concoction in all its bearings from first to last, as proven by their own inconsistent and contradictory testimony, as well as that of the

alleged capturer, Mungur Degwar. But taking the evidence in mass, I consider the following facts sufficiently established, that the deceased, a farmer, resident of Mudderdee, for some unknown cause, was illegally apprehended and detained in the Mudderdee Cutcherry in charge of Hulkara Singh and Bhoolia Doosad, and with Nijabut Khan's cognizance; that he there came to a violent death as is presumable, by the disinterment of his body buried to so great a depth within such a place as the new building for the bazar close to this cutcherry. It is quite impossible there could have been any smuggling of the body where it was found under such circumstances, or that its interment there in such a manner could have taken place without the full cognizance of the residents of Mudderdee in general, and the three prisoners as the village authorities, in particular. Nijabut Khan's original defences were peculiarly silent and unintelligible in this respect, and before the court the utmost he insinuates is that the new bazar building was in a retired out-of-the-way place, which is not the fact as generally stated, it being as much, if not more, within the village than the cutcherry itself, and as is well proven by his own witnesses, Purna Mahto's (32,) equivocation in this respect, the only one of his own witness he attempted to examine on this point. He also cross-questioned the witnesses for the prosecution, as to the interest taken by the Modab proprietors in the investigation, but there is nothing to show that this was of an improper tendency, or that they could have possibly influenced the discovery of the body in the way in which it was brought to light in any manner whatsoever, or that they could have had any object in so doing. For these reasons, I concur in the law officer's finding, convicting Hulkara Singh and Bhoolia Doosad of the culpable homicide of the deceased and Nijabut Khan as an accomplice therein, on strong presumption, and considering Nijabut Khan as the most influential and guilty party of the three, he has been sentenced as within.

Sentence passed by the lower court.—Nos. 2 and 3 to be imprisoned for the period of five (5) years with labor in irons: No. 4 to be imprisoned for the period of seven (7) years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—This is a mysterious and difficult case, which has been the subject of a very confused investigation and report.

The only facts to be depended on are that the deceased was brought, on some ground or other, on Sunday afternoon the 20th March last to the Mudderdee Cutcherry, and then made over, by order of the gomashta, prisoner No. 4, Nijabut Khan, to the other two prisoners, and that during the night he met

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with a violent end, as is sufficiently proved by his corpse, he being a Hindoo, not having been given to his friends to be burnt, but having been clandestinely buried at a considerable depth below the floor of a new building, which was being raised as a bazar near the cutcherry.

The corpse was taken up when too much decomposed for any accurate examination.

The zillah law officer, on the ground that there was no mark of an incised wound, holds that the death can only be classed under the head of culpable homicide, but finds the prisoners Nos. 2 and 3 guilty as principals, and the prisoner No. 4 guilty as an accomplice in that crime.

Our criminal law has, from the first, set aside the distinctions of the Mahomedan law schools as to the particular instrument by which death is caused, and there is no fact in this case on which to introduce any reference to these distinctions, as there is no evidence whatever as to the manner of killing.

That the deceased must have met his death, by some force or violence, is established and also that all the prisoners must have been aware of the circumstance.

The prisoner No. 2, Hulkara Singh, however, gave information of his belief that violence had been committed, and of the place of interment, to the police on the 22nd March. He must consequently be acquitted of the charge of concealing his knowledge of the commission of the crime, that is, of privity to it. As there is no other proof in the case, I acquit him and direct his release.

I convict the two other prisoners (Nos. 3 and 4) of privity to murder, and, on that conviction, confirm the sentences which have been passed on them by the sessions judge.

PRESENT :
J. R. COLVIN, Esq., Judge.

GOVERNMENT

versus

BHEEM PASSEE.

CRIME CHARGED.—1st count, wilful murder of Mohoongoo Mussulman, and 2nd count, wounding with intent to murder the said Mohoongoo Mussulman.

CRIME ESTABLISHED.—Wounding Mohoongoo Mussulman, with intent to mutilate, resulting in death.

Committing Officer.—Mr. G. A. Paxton, assistant, exercising powers of joint-magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the 24-Pergunnahs, on the 4th August 1853.

Remarks by the officiating additional sessions judge.—This prisoner was originally committed on a charge of wounding with intent to murder, but the injured party having died from the effects of the wound he was re-committed for wilful murder under the authority of the zillah sessions court. The particulars of the case are briefly the following :—The wife of the prisoner was suspected of mal-practices, especially with the deceased, and the pair were in consequence excommunicated in a social sense. The matter became the subject of punchayet deliberation and the issue was favorable to the accused. The event was the cause of much rejoicing and ended in merry-making over a bottle of wine at the prisoner's house. The bout concluded, one of the guests retired, but the deceased pleaded inebriety and was allowed to pass the night in the verandah. The prisoner and his wife retired to rest also. Late at night the prisoner awoke, and not finding his partner by his side, left the bed, and going to the door saw her in the embraces of the deceased. He went back to the bed, under which there appears to have been a *hunswa*, a kind of sickle, and arming himself with it, rushed on the deceased and inflicting a severe wound on the organ of generation, nearly severed that member from its contiguous parts. The wounded man was sent to the hospital for medical treatment, and the surgeon has given it, as his opinion, that he believed at the time that he would have had strength of constitution to get over the injury ; but unfavourable symptoms came on, amputation was deemed necessary and mortification and death ensued. The prisoner confessed the crime before the police and the joint-magistrate, and the purport of his confessions is what I have above stated. His wife however gives a different version

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The prisoner detecting his wife in the act of adultery with the deceased in the verandah, stepped back into the room for a weapon, with which he inflicted a wound on the deceased's organ of generation, which subsequently caused his death.

Sentence
one year's imprisonment.

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of the affair and says, that the deceased was lying drunk on his back, when the prisoner committed the deed, but her evidence stands alone and is most probably and perhaps very naturally influenced by the desire of self-exculpation. The declaration made by the deceased, proved and attested before this court, clearly implicates the prisoner as the perpetrator of the injury and becomes strong corroborative evidence. The provocation the prisoner received was doubtless excessive, but he had time to reflect before he resented the insult, as it must have occupied some moments before he could lay his hands on the *hanswa* in the dark. To suppose that he placed it under the bed premeditatedly in anticipation of his guest's perfidy would be to enhance his guilt. The only defence the prisoner makes is, that his wife paid his captor 2 annas to have him arrested, a fact proved by the evidence for the prosecution.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—This case has been referred to the law officer of the Nizamut Adawlut for his opinion. He declares the prisoner entitled to his release, as the whole proof rests on his own confessions, which are, that he struck the deceased on finding him in the very act of adultery with his wife. This doubtless is the state of facts, as far as shown on the record and admitted by the officiating sessions judge. Had the prisoner had the *hanswa* close by him at the moment, I should have concurred with the law officer and released him. There was however a slight interval for reflection, as he had to step back into his room from the verandah, in order to get the instrument. But the sentence passed : of seven years' imprisonment with labor and irons, appears to be much too severe, under the circumstances and the law by which our courts are guided.

There is indeed a case, similar in its important circumstances to this, (that of Mudun Paker, of June 30, 1838, *Nizamut Adawlut Report*, p. 90,) in which a majority of three judges acquitted the prisoner. But the series of precedents show, that acquittal has been usually ordered in cases in which the prisoner killed guilty parties, with an instrument either in his hands or close by him at the moment. I sentence the prisoner to imprisonment for one year, from the date of the first sentence, and to a fine of ten rupees, payable within fourteen days from the date of the communication to him of this order, or, in default of payment, to labor as usual.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

LOOTFUL HUQ, SALT DAROGAII.

CRIME CHARGED.—1st count, under Act XIII. of 1850, embezzlement in having, when employed in the service of Government as salt darogah of Gopeebullubpore, knowingly and fraudulently embezzled 1,001 maunds of salt belonging to his employer, the Government, which had come into his possession by virtue of his office, by feloniously and fraudulently selling, or otherwise appropriating it to his own advantage, and wilfully and knowingly omitting to enter such sales or appropriation in the accounts of his said employer, the Government; 2nd count, in having, when employed in the service of Government as salt darogah of Gopeebullubpore, knowingly and fraudulently embezzled 1,218 maunds 20 seers of salt belonging to his employer, the Government, which had come into his possession by virtue of his office, by feloniously and fraudulently selling, or otherwise appropriating it to his own advantage, and wilfully and knowingly omitting to enter such sales or appropriation in the accounts of his said employer, the Government; 3rd count, theft on a 1st count, in having, as a servant of Government, knowingly and feloniously sold 1,001 maunds of salt belonging to his employer, the Government, without due authority, and applied it to his own purposes; and 4th count, theft on a 2nd count, in having, as a servant of Government, knowingly and feloniously sold 1,218 maunds 20 seers of salt belonging to his employer, the Government, without due authority, and applied it to his own purposes.

CRIME ESTABLISHED.—Embezzlement.

Committing Officer—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 10th August 1853.

Remarks by the sessions judge.—It is in evidence, documentary and oral, that the witness Madhubchunder Mookerjea, the witness No. 1, was deputed by the witness No. 10, Mr. Bamber, to the salt golahs at Gopeebullubpore, in the Jellasore division, of which the prisoner was the darogah, to weigh and test the quantity of salt in store. The result of the weighments, which were conducted in the presence of the darogah's representative and other officers of Government, showed an out-turn (after

MIDNAPORE.

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Case

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HUQ.

The prisoner, who is a salt darogah, was convicted of embezzlement by the sessions judge on two counts—one, having reference to a defalcation occurring when he himself was in charge of the golahs—the other, to a defalcation occurring during the time the person appointed on his nomination held charge.

In appeal, a legal objection, that the prisoner, though civilly responsible for the person acting for him, cannot be held criminally liable for that person's acts, being allowed, a modified sentence was passed.

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all deductions for sale from 1st January to 28th April 1853, the date on which weighments commenced) of 4,993 maunds 32 seers. The quantity in store, according to register 5, marked B, and chellauns marked C, *should have been* 7,213 maunds 12 seers, the actual deficit was therefore 2,219 maunds 20 seers, which quantity the prisoner is charged, under Act XIII. of 1850, with having embezzled and appropriated to his own use. The prisoner in his defence pleads, that he was required by his superior, the late Superintendent, Mr. Campbell, to make good rupees 1,929, alleged to be due on account of the sale of retail salt at the close of the year 1852; and that he was further desired to pay to the contractor for lading salt from the agency at Ramnugur to the Jellasore chowky rupees 1,074; and to meet this call, he was directed to dispose of the salt and to adjust the transaction in future accounts; that he accordingly sold 1,001 maunds of salt in the month of February 1853 and distributed the proceeds as instructed by Mr. Campbell, though he never made any entry of the transaction in his account. In regard to the 1,218 maunds 20 seers of salt, he pleads that he made over charge of the Gopeebullubpore golahs to his janib or substitute on the 3rd March, to appear at the collector's office at Jellasore, pending an enquiry that was then going on into Mr. Campbell's conduct: that he was not present when the salt was weighed off in April, and that he cannot be answerable for any deficiencies that might have occurred by the fraud and collusion of his janib and the parties who *purtaled* the salt. He further states, that the 3,530 maunds 19 seers of salt, that arrived at the golahs in February, were not credited in the register 5 for that month, but in that for March following, because the whole of the quantity covered by the *rahdareechar* had not reached the golahs when he made over charge, and the salt that had come to hand *ad interim* was put in deposit. The prisoner, as shown above, admits that he made away with the 1,001 maunds of salt and rendered no account of it in his books. In support of his plea, that he remitted the proceeds to his superior (Mr. Campbell) he files two chellauns and a receipt, said to have been forwarded to him from Mr. Campbell's office—the latter bears Mr. Campbell's signature; but in his evidence before the magistrate, he (Mr. Campbell) declares his entire ignorance of the matter to which the darogah alludes, and declines to swear that either the seal or signature are his, though somewhat like them. The chellauns bear the signature of the nazir of Mr. Campbell's office, but are not verified in any way, nor does the defendant attempt to show that the nazir, supposing the signature to be really his, had any authority to grant receipts for the proceeds arising from the

sale of Government salt at the several golahs in Jellasore. On the other hand, the prisoner's admission of having sold 1,001 maunds of salt, without duly accounting for it, or its value, in the register, is fully corroborated by the evidence for the prosecution. According to the accounts, duly verified, prisoner should have had in his possession (after deducting for dryage and *sales* duly entered in the register 5, as also for the 1,001 maunds which, according to his own admission, he sold without accounting for) 3,624 maunds 8 seers, but the register 5, marked B, proves that he never brought 3,530 maunds 39 seers to account at all in February, as he was bound to do by the regulations of his office; and according to his own confession, there were in store, on the 3rd March, when he made over charge to his janib, 138 maunds 5 seers only, from which it must be presumed that the first quantity, *viz.*, 3,530 maunds 39 seers were not in the golahs at Gopeebullubpore on 3rd March. If it had been in store on that date, it would undoubtedly have been made over to the substitute. The janib, as he is termed, is not a servant of the Government, but a confidential agent of the prisoner. His taking temporary charge of the golahs was sanctioned by witness No. 1, at the express desire of the prisoner, who rendered himself responsible in every way for the conduct of his substitute. According to witness, on no other condition would the prisoner have been allowed to be absent himself from the golahs. It is necessary to note this, particularly to show that the janib was the confidential servant of the prisoner, and that it was therefore both his interest and his desire in every way to protect the character of his employer, and to conceal, if possible, the malversation that had occurred, and thereby save the darogah the consequences of its discovery: that the janib's proceedings were influenced by such motives may be inferred from his taking on himself the responsibility of crediting the 3,530 maunds 39 seers, which were received at Gopeebullubpore in February, in the March accounts, knowing that such entry was false and that salt to that extent was not then in store. It is beyond the reach of probability, that the janib should have made away with any salt, as the prisoner in his defence wishes to insinuate. The prisoner at this time had been summoned to Jellasore by the witness No. 1, to answer for his conduct in a case of embezzlement, in which his superior (Mr. Campbell) was deeply implicated. The said witness had been deputed to Jellasore for the special purpose of investigating the illegal practices, which it was suspected had for a time prevailed at the several salt golahs of the division, and he had taken measures to relieve all the officers in charge of them, with a view to ascertain their nature and extent. Under such circumstances, it is improbable, nay almost

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impossible, that the janib should have made away with any salt between the 3rd and 28th April, when the weighments commenced by order of witness No. 1 ; and the presumption is, I think, irresistible, that the embezzlement of 1,218 maunds 30 seers occurred prior to the 3rd March, when the prisoner was in charge of the golahs. The prisoner's plea, that in selling 1,001 maunds of salt, he acted in conformity with the orders of his superior, even if proven, is no extenuation of his fault ; neither the sale of salt nor its proceeds were accounted for by the prisoner in his accounts ; and if he did not appropriate either to his own use, he wilfully aided and abetted others in doing so. The prisoner is of course desirous of throwing the entire responsibility on Mr. Campbell, but however culpable that officer may have been, there can be no doubt that the whole of the salt establishment in the Jellasore division connived at and participated in the system of peculation, that has existed there for some years past. Mr. Campbell has been called on to answer for his conduct before another tribunal, and whatever may be the result, there can be no question that he made use of public money to meet his expenses, which were beyond his means. He has put himself in the power of his subordinates, most of them intelligent, experienced officers, who did not fail, under the cloak of their superior and his bad example, to carry on a system of plunder, the extent of which has not, and probably never will be, clearly ascertained. The assessors pronounce the prisoner guilty of the 1st count of the charge, on his own confession and the evidence adduced in corroboration of it, and they likewise deem him guilty of the 2nd count of the charge on suspicion. I fully concur in this verdict on the 1st count ; as regards the 2nd count, I differ in opinion with them, inasmuch as I think the prisoner guilty on strong presumptive evidence, and he is accordingly sentenced as indicated in the statement.

Sentence passed by the lower court.—Five (5) years' imprisonment without irons, and a fine to Government of Company's rupees 6,658-8, the value of salt embezzled.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner is a salt darogah. He has been convicted of embezzlement, and sentenced to five (5) years' imprisonment with labor.

Mr. Waller and Murhumut Hossein appear for the prisoner in appeal, and urge three objections :—

First.—That the controller did not get the permission of the Salt Board to undertake the prosecution required by Section II. Act XXXII. of 1852 : that the proceedings are therefore bad in law ;

Secondly.—That the offence of salt embezzlement is specially provided for in Section XXVIII. Act XXIX. of 1838, and

made punishable by the magistrate: that commitment, under the general law of Act XIII. of 1850, is therefore illegal; and

Thirdly.—That the prisoner, though civilly responsible for the person acting for him, cannot be held liable criminally for that person's acts.

The two first objections are not tenable. Act XXXII. of 1852 applies only to subordinate ministerial or police officers. The prisoner does not fall within either of these classes.

Section XXVII. Act XXIX. of 1838 makes provision for the punishment of salt embezzlements by the magistrate, and there may be cases in which it is expedient to proceed under that law, but there is nothing to hinder the authorities from proceeding under Act XIII. of 1850, in cases which, from their importance, seem to call for a heavier measure of punishment than it is within the competency of the magistrate to award.

The third objection, however, appears to me to be valid. As I hold the defalcation to be established, it remains therefore to consider how far the admission of this objection will affect the sentence. It is true, that the criminality of the prisoner is not to be measured precisely by the quantity of salt embezzled, but no doubt the sessions judge was guided in passing sentence by a consideration of the punishment which should follow conviction on both the counts of the charge. I am therefore prepared to reduce the term of imprisonment.

The sentence of the Court is, that the prisoner be imprisoned for the term of three (3) years with labor, commutable to a fine of rupees 150, payable within fifteen days, and that the fine imposed under Act XVI. of 1850 be reduced to Company's rupees 3,003, the value of the salt embezzled during the time the prisoner was himself in charge of the golahs.

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Case of
Lootful
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PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

**DEYBOO MANJEE AND GOVERNMENT
versus
HARRAH.**

**HAZAREE-
BAUGH.**

1853.

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Case of
HARRAH.

Prisoner convicted of attempt at dacoity and sentenced by the session court to five years' imprisonment.
Appeal rejected.

CRIME CHARGED.—Attempt at dacoity in the house of the prosecutor Deyboo Manjee.

CRIME ESTABLISHED.—Attempt at dacoity.

Committing Officer—Captain G. N. Oakes, first class assistant agent to the Governor General, of Maunbboom.

Tried before Major J. Hannyngton, deputy commissioner, Chota Nagpore, on the 23rd August 1853.

Remarks by the deputy commissioner.—It appears, in this case, that on the night of the 2nd July last, the enclosure of the prosecutor's house was entered by a gang of men; on the discovery of which the prosecutor's son ran out and laid hold of the prisoner within the enclosure. An alarm being raised, the villagers assembled and the gang thereupon decamped, without having effected any robbery. The evidence obtained established these facts. The prisoner in his defence said that he was passing through the village by night and was seized without reason by the prosecutor's son. Of this the prisoner could bring no proof. The jury found the prisoner guilty as charged. That the prisoner was taken in the manner above stated is proved beyond doubt, and therefore, in concurrence with the verdict of the jury, the prisoner was sentenced as shown.

Sentence passed by the lower court.—Imprisonment with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner has appealed. His plea, that he was drunk and was unjustly seized by the prosecutor, because he insulted his females, is in no way established. It is in evidence that the enclosure of the prosecutor's house was entered with open violence by a gang of armed men. I see no reason to interfere.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND KISTOMOHUN GURRAIN

versus

HUREE HAREE.

CRIME CHARGED.—Attempt at murder of the plaintiff.

Committing Officer—Mr. G. Hewett, deputy magistrate, with full powers of a magistrate at Cutwa, Burdwan.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 5th September 1853.

Remarks by the sessions judge.—The *futwa* of the law officer of this court convicts the prisoner of making an attempt to murder the prosecutor, and declares him to be liable to discretionary punishment by *tazeer*.

It is proved on the oath of the prosecutor and two credible witnesses, that the prisoner, who was an old man and lately discarded servant of the prosecutor, and knew exactly where the money, &c. was kept, went with other persons unknown, and by placing his foot on the prosecutor's throat and stopping his mouth and nostrils with his hands, he tried to deprive him of life.

It happened that the two eye-witnesses were sleeping near the prosecutor and they were awoke, and hearing a sound of throttling, began to make a noise.

Just at the same time, the fore-finger of the prisoner slipped into the prosecutor's mouth and he bit off the end of it. The prisoner and those with him were making their retreat, when he was recognised by Buddun Jogee and Ramchunder Chowkeedar.

The prisoner does not deny having been in the prosecutor's house at midnight and having had his finger bitten off, but says that the house was attacked by dacoits, and that the prosecutor went into a fit with fright, when he got some water and was endeavouring to make him drink some, when he suddenly and unconsciously bit off the end of his finger. This story, it is useless perhaps to say, was without any foundation. Out of the five witnesses summoned on his behalf, he only wished to have three examined. One of them could say nothing in his favor; the second merely said he had heard from the prisoner, that he had been in the service of the prosecutor; and the prisoner declined having the third examined.

Being of opinion that the prisoner wilfully and maliciously attempted to deprive the prosecutor of life by suffocation, I am of opinion he should be imprisoned in transportation for life.

NUDDEA.

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Case of
HUREE HA-
REE.Prisoner
charged with
attempt at
murder, ac-
quitted on ac-
count of the
insufficiency of
the evidence.

1853.

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 Case of
**HUREE HAA-
REE.**

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The sessions judge states, that it is proved on the oath of the prosecutor and two credible witnesses, that the prisoner attempted to murder the prosecutor by placing one foot on his throat, as he was sleeping on a wooden cot, and stopping his mouth and nostrils with his hand, but the record does not bear out this statement. One witness only, and he is the prosecutor's servant, gave such testimony—the other witness, though he deposed to the like effect before the magistrate, swore in contradiction thereto on the trial, that he merely saw the prisoner and the prosecutor's other servant retreating from the house. This important variance is fatal to the credit of this, the only disinterested witness; but I see much reason to doubt the truth of the plaintiff's story. The prisoner was armed with a stick, and the prosecutor, though he struggled long and hard with the prisoner, bore no marks of violence on his person. Had the prisoner been, as alleged by the prosecutor, actuated by revenge for dismissal from his service, or by a desire to rid himself of the debts he had contracted to him to take his life, it is but reasonable to suppose that he would have done the deed in solitude and silence and taken effectual means to effect his purpose. Again, had robbery been, as surmised by the sessions judge, the impelling motive to the crime, some endeavour would have assuredly been made by his accomplices to plunder the house, especially as the prisoner knew where the money and valuables were kept, but not a box was broken, or an article carried off. The escape, too, of the prisoner, from the hands of his captors, one having hold of his waist and the other crushing his finger with his teeth, while he in great agony implored to be let go, is in no way accounted for. There is no doubt the prisoner entered the house of the prosecutor at night for no good purpose, and in a struggle with the prosecutor got the tip of his finger bit off, but the evidence, unsupported as it is by any corroborative circumstance, does not satisfy me that the prisoner wilfully attempted to deprive the prosecutor of life by suffocation. I do not believe the true facts of the case have been developed. On these considerations, I acquit the prisoner and direct his release.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

RAMNEEDHEE KOONDOO AND GOVERNMENT

versus

FUYZUDDI SHIKDAR (No. 4 APPELLANT,) JOKEE SHEIKH (No. 5,) HOSSEIN MERDHA ALIAS GOROLE MERDHA (No. 11,) JOHEERUDDEE SHEIKH (No. 14,) AND PANCHOO SHEIKH (No. 16.)

CRIME CHARGED.—Nos. 4, 5, 11 and 16 : 1st count, dacoity at the house of the prosecutor and plundering property therefrom to the amount of rupees 753-10 on the night of the 6th March 1853, corresponding with the 24th Phagoon 1259 B. S.; 2nd count, receiving portions of the plundered property, knowing the same to have been obtained by robbery by open violence. Prisoner No. 4 is also charged on the 3rd count with belonging to a gang of dacoits, within the intent and meaning of Act XXIV. of 1843.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. C. S. Belli, magistrate of Jessore. Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 25th May 1853.

Remarks by the sessions judge.—It is in evidence that prosecutor's house was attacked by dacoits, on the night of 6th March, but no one was recognized.

Property, as per inventory of 7th March, valued at rupees 132-1, and cash rupees 600, were carried off.

From the thannah papers it appears, that Fuyzuddi (No. 4) and Kulum Khan (No. 6) were first suspected, and that prosecutor named them as suspicious characters. Fuyzuddi (No. 4) was first apprehended and confessed on 11th March.

Aruz Meer, Burkundauze, (witness No. 37) had conversation with the wife of Kulum Khan, (No. 6,) which led to the arrest of Jokee, (No. 5,) who confessed on 16th idem and implicated the aforesaid Fuyzuddi and other prisoners.

The prosecutor states, that on the 7th March the darogah wrote down an inventory of articles, which prosecutor missed, as plundered.

Prosecutor signed the list and declared he would afterwards mention any other articles which he might recollect.

Another list was prepared on 16th idem, the day that Jokee's house was searched in the mofussil.

Prosecutor denies before me that he named Fuyzuddi (No. 4) as a suspected character in the mofussil, yet the name of that prisoner is given in the prosecutor's deposition of

JESSORE.

1853.

October 4.

Case of

FUYZUDDI
SHIKDAR and
others.

A prisoner convicted of dacoity by the sessions judge acquitted in appeal, the finding of the stolen property in his possession being attended with very questionable circumstances in the conduct of the police.

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7th March, which was sent in with the darogah's report of the same date.

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Case of
FUZYUDDI
SHIKDAR and
others

Witnesses Nos. 5, 7 and 22 also declare, that they did not tell the darogah that they suspected him, though in the record of mofussil enquiry, dated 9th idem, to which their names are appended, he is named.

They could not recognize him among the prisoners under trial.

Fuyzuddi (No. 4) was apprehended before the other prisoners : he confessed in the mofussil on 11th March. Witnesses attest the mofussil confession and declare that it was voluntary.

No property of prosecutor's was found on searching his premises.

He was sent in, under charge of Kamaluddy Burkundauze, on the 11th, and on the 14th recanted before the magistrate and was placed in hajut. Subsequently, on the 16th March, the darogah suggested that he might be sent back. Aruz Meer Burkundauze (witness No. 37) and witnesses Nos. 93 and 94 escorted him, and declare that on the way back he promised to point out the property. Afterwards lots 10 to 14 (seven silver ornaments) of the first inventory were produced, from some ashes behind prisoner's house, in the presence of witnesses. Plaintiff and his brother Pearymohun and witnesses Nos. 78, 79 and 80, of plaintiff, identify them.

Fuyzuddi persists in his recantation, and declares he was detained some days and was beaten before he confessed in the mofussil ; and also that he was beaten by witness No 37, Aruz Meer Burkundauze, on his way back to the mofussil, and that his enemies Asseemuddee and Rashed (No. 38) got out the property behind his house ; but this is not substantiated by the witnesses Nos. 39 and 40, to the production of the property, or by witnesses Nos 93 and 94.

Witnesses for the defence, *viz.*, Nos. 105 to 107, declare that Fuyzuddi is a tehsildar or gomashta of part of the village, and that Asseemuddee and Tureekoola being tehsildars of another portion, bear ill-will to the prisoner in consequence ; but their evidence is discrepant, nor does it tally with evidence of witnesses Nos. 141 and 149, the last of whom declares that Fuyzuddi is not a gomashta. Witnesses Nos. 96 and 97 declare he is a *lateef* of Issur Moonshee's and associates with bad characters.

Witnesses for the defence of other prisoners admit that there was a tumultuous assemblage, between Issur Monshee and Kalikant Rai, in Magh or Phagoon last.

The prisoner No. 4, in his mofussil confession, stated that he was leader of one side, and Nizam was leader of the other side, and they had agreed to unite and to commit this dacoity,

which they perpetrated, and that he obtained half the ornaments and Nizam took the other half.

Prisoner No. 5, Jokee, confessed in the mofussil.

It is true that witnesses Nos. 8, 9 and 14 (the attesting witnesses to the mofussil confession) declare that he was apprehended and beaten by Aruz Meer Burkundauze, (witness No. 37) before the date on which his mofussil confession was taken at Assemuddee Shikdar's cutcherry. Of the property discovered near his house, *viz.*, lots 1 to 6, the gold ornament (lot 1) and cloths (4 to 6) were not* in the original inventory, nor are they recognized by the plaintiff's brother Pearymohun, or by Bunsee Beharee, another inmate of the house.

Witnesses Nos. 6, 78, 79 and 80 (who profess to be intimate) recognize them, but lot 2 is identified as of the first inventory by Pearymohun and other witnesses: lot 3 (being cash) is not capable of recognition.

The prisoner repeated his confession before the magistrate; that confession is duly attested as having been taken before the magistrate and freely given, and the witnesses declare that the police were not present to intimidate. He declares that he was threatened by Aruz Meer (witness No. 37,) Assemuddee and Rashed Shikdar (witness No. 38,) that if he did not repeat his confession before the magistrate, his wife and house would suffer; but his witnesses do not prove this.

Prisoner No. 1⁹ confessed in the mofussil and before the magistrate, his confessions are duly attested by the subscribing witnesses. Gold beads (lot 15,) (not mentioned in the first inventory of 7th March, though they are in the second of 16th idem,) were found under a plantain tree near the prisoner's house. Though neither plaintiff's brother Pearymohun nor Bunsee Beharee (another inmate of plaintiff's house) recognize them, witnesses Nos. 78, 79 and 80 identify them. The prisoner declares that the mohurir first searched his house and found nothing, but that Aruz Meer (witness No. 37) and Kalanuddee (No. 59,) burkundauzes, tied him up and beat him and made him confess; and that Assemuddee and Turceekolla (gomashtas) and Rashed Shikdar (witness No. 38,) got something out near his house; but this is not proved by the prisoner's witnesses or by other evidence. The finding of the property is verified by witnesses Nos. 58 and 60.

Prisoner No. 14 declares that he made no confession to the police or to the magistrate, and denies dacoity and production of property, declaring that Fukeer Khan Burkundauze and darogah beat him for six days.

Two silver ornaments of the first inventory, *viz.*, lots 23 and 24, were found in the thatch of his shed and have been

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* *Vide* plaintiff's deposition before me.

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identified : the confessions have been duly attested and his witnesses say nothing to clear him.

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others.

Prisoner No. 16 denies dacoity, confession and production of property, and declares he was five or seven days in charge of Aruz Meer Burkundauze.

Only cash was found with this prisoner, but his confessions, in the mofussil and before the magistrate, have been supported by the testimony of attesting witnesses and the witnesses for his defence do not clear him.

Under these circumstances, I convict the above five prisoners of dacoity and sentence them each, to seven (7) years' imprisonment with labor and irons.

The magistrate's attention was called to Circular Order No. 73 of 23rd August 1810, and No. 18 of 18th January 1839, under the Court's order No. 331, of 30th March last.

Mr. Belli, in his letter, No. 125 of 4th April 1853, says that he never allows the indicting mohurir to see the mofussil confession, until he has written down what the prisoner says before himself.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—The only proof, against the prisoner appealing, is some property sworn to by the prosecutor and alleged to have been pointed out by the prisoner himself, concealed in some ashes at the back of his house.

I find that the prisoner was first sent to the magistrate as confessing his guilt, but in whose house, after searching it, no property had been found. On reaching the magistrate's court, he repudiated his thannah confession, and at the suggestion of the darogah was sent back to the police. On his return it is said he pointed out the property used against him. He persisted in denying all knowledge of these articles, and it seems to me very extraordinary, that when first confessing he should withhold this property and it should escape the search, and when making no confession at all, he should give it up.

I don't think much dependance can be placed on the honesty of the police proceedings in this matter and I therefore acquit the prisoner.

PRESENT :

A. J. M. MILLS, Esq., }
 AND }
 H. T. RAIKES, Esq., } *Officiating Judges.*

GOVERNMENT

versus

ALEEMUDDY SHEIKH.

CRIME CHARGED.—Culpable homicide of Doololl Sheikh.
Committing Officer—Mr. E. A. Samuell, magistrate of
 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 26th September 1853.

Remarks by the officiating additional sessions judge.—The particulars of the case are as follow:—The prisoner, the deceased and the witnesses Nos. 1, 2, 3 were all drinking in the house of the witness No. 4, who is a licensed liquor-vender and has a shop. After drinking, the deceased got up and paid his reckoning. He was followed by the prisoners. As soon as they got on the high road, some altercation seems to have taken place between them, and the noise attracted the witnesses I have mentioned, who came out and saw the prisoner push the deceased. The effect of this push was that the deceased fell into a deep drain, and in the fall sustained a compound fracture of the left arm just above the wrist. He was sent to the police hospital for surgical treatment, and on the third day after his admission, mortification of the arm ensued. The police surgeon, Mr. Woodford, tried to persuade the deceased to have his arm amputated, assuring him, that under the influence of chloroform, he would suffer no pain in its removal, but the poor man declared that he would sooner die than undergo the operation. Two days after this he became delirious and died within forty-eight hours.

There appears to have been no previous ill-will between the prisoner and the deceased, and no dispute to have taken place during the time they were drinking together. A sudden quarrel seems to have arisen on the road, which, under the excitement of wine, led to the assault, insignificant in itself, though attended with such a grievous result. It is true that the deceased stated at the thannah, that the prisoner had twice struck him and pushed him into the drain, in consequence of his having had words with the *pashi* or liquor-vender, who was the prisoner's friend, but the statement is neither supported by evidence nor material to the case over and above the proof already adduced.

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 —————
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Case of
 ALEEMUDDY
 SHEIKH.

Prisoner convicted of culpable homicide in a drunken brawl, death having ensued partly from the reluctance of the wounded man to submit to an operation, sentenced to three months' imprisonment.

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The prisoner denies the charge and accuses the publican (the witness No. 4) with getting up this prosecution against him for having informed the abkaree superintendent's people, that he sold liquor in his private house, such act being a contravention of the abkaree laws. He names no witnesses to his defence. The *futwa* of the law officer acquits the prisoner and declares him entitled to his release.

I cannot concur in this finding of *not guilty*. The assault is distinctly deposed to, and consequently obnoxious to punishment by the law. That it entailed in its course consequences foreign to the offender's mind and utterly unpremeditated and unwished-for, I am quite free to admit, but still it was the remote cause of death, and as such must be viewed in a somewhat graver light than a simple misdemeanour. I would therefore convict of culpable homicide, but under the extenuating circumstances of the case, propose that the prisoner be sentenced to three (3) months' imprisonment with labor, commutable to a fine of rupees 10. In recommending this sentence, I have had regard to the fact that the prisoner has already been in custody since the 24th May last.

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. J. M. Mills and H. T. Raikes.)—We concur in the view of the case taken by the sessions judge, and convicting the prisoner of culpable homicide, sentence him, as recommended by the sessions judge, to three (3) months' imprisonment with labor, if not redeemed by the payment of a fine of rupees 10 within fifteen days.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

RAM SINGH ALIAS GOPAUL SINGH.

CRIME CHARGED.—Dacoity and plunder of property valued at Company's rupees 375. 24-PERGUNNAHS.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. Edward Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the 24-Pergunnahs, on the 2nd August 1853.

Remarks by the officiating additional sessions judge.—This prisoner was tried with his accomplice, Bhikaree Singh, punished without reference to the Nizamut Adawlut, as per statement of this court, No. 6, trial No. 13, of July 1853. The evidence that implicated Bhikaree equally affects this prisoner, and it is abundantly proved, that he formed part of the gang of up-country men, who committed the daring dacoity at Howrah in November last, in which seven persons were convicted and sentenced by my predecessor. I refer the Court to his report of the case as given in statement No. 6 of the sessions held in January last, trial No. 10, extract from which I append. The sentence against the prisoner was postponed in Bhikaree's case for further evidence, and the proof against him is the testimony of the approver Luchmuni Dichit, the fact of his flight and arrest in another district, and his confession before the police. The prisoner repudiates this confession and affirms that it was extorted under violence used towards him by the darogah, but calls no witnesses to prove plea. I entertain no doubt whatever of the prisoner's guilt.

Extract from the remarks of the late additional sessions judge on the trial of Chunun Singh and five others, held by him in January 1853.

"On the evening of the 25th of November last, the house of the prosecutrix, Isharee Khankee, was attacked and plundered of property, valued more than Company's rupees 300, by a body of up-country men. She lives about three beeguls from a *pharee* and at the sunder station, but the dacoits went off without opposition and none of these prisoners were said to have been recognized among them by any witness. A post-man was passing by the *pharee* Debissara, which is three *coss* from the scene of crime, and he told the police at the *pharee*, that the dacoity had taken place and that he had seen a party of suspicious-looking

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SINGH.

Prisoner con-
victed of da-
coity sentenced
by the sessions
judge to 14
years'imprison-
ment. Appeal
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men as he had come there. The *pharee* police in consequence of this information, apprehended the prisoners Nos. 1 and 2 at a village called Kalea, about two *coss* from the house of the prosecutrix. They were armed with a sword and a pistol, and a silver chain and a key, and a gold chain were found on them, which proved to be a part of the property which had been plundered."

Sentence passed by the lower court.—Fourteen (14) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The evidence against the prisoner is abundantly sufficient. He is implicated by the approver, sworn to by the person who procured the boat in which the gang embarked, mentioned by all his associates in their confessions, and of the voluntary character of his own confession before the police: I see no reason to entertain any doubt.

The sentence is confirmed.

PRESENT:

SIR R. BARLOW, BART., }
AND } *Judges.*
J. R. COLVIN, Esq., }

GOVERNMENT AND MUSST. MALTEE ALIAS
MALLEE.

versus

DASS SWAINE (No. 1.) MUDDUN PURRIDA (No. 2.)
HURREE PURRIDA (No. 3.) BHAGBUT PURRIDA
(No. 4.) HURREE DASS (No. 5.) AND PURREE PUR-
RIDA (No. 6.)

CUTTACK.

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Case of

DASS SWAINE
and others.

Four prisoners, convicted as accomplices in wilful murder, sentenced to transportation for life. Two other prisoners, convicted of robbery from the house of the murdered man, sentenced to 14 years' imprisonment.

CRIME CHARGED.—1st count, Nos. 1, 2, 3, and 4, wilful murder of Baoree Swaine, husband of the prosecutrix; 2nd count, Nos. 1 to 6, robbery from the house of the murdered Baoree Swaine of property valued at rupees 30-9-6, more or less; and 3rd count, Nos. 2, 3, 4 and 5, receipt and possession of property robbed from the house of the murdered Baoree Swaine, with knowledge that it was so robbed.

Committing Officer—Mr. G. C. Fletcher, joint-magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 11th July 1853.

Remarks by the sessions judge.—From the statement of the prosecutrix Musst. Maltee, the wife of the deceased Baoree Swaine, (and likewise from the evidence of the witnesses,) it appears, that on the night of the *poorneema* or full moon, in the month of Bysakh, corresponding with the 22nd May last, after the performance of the *sutteenarain poojah* at the house of the deceased, at which several of

his neighbours were present, the deceased at about 11 o'clock was making preparations to take his evening repast prior to retiring to bed, when Dass Swaine, *his brother*, (the prisoner No. 1,) came and struck him a blow with a stick ; and on his calling out that he had been beat, his wife went to the spot and saw the prisoners Dass Swaine (No. 1,) Muddun Purrida (No. 2,) Hurree Purrida (No. 3) and Bhagbut Purrida (No. 4,) assault him with sticks and drag him along the ground towards the house of Arut Bhooee, one of their neighbours, whence he somehow made his escape and crawled back to his house ; and while he was telling his neighbours, (witnesses Nos. 1 to 5,) who had repaired thither, to ascertain why they beat him, the said prisoners returned, when Dass Swaine threw a rope round his body, and with the others pulled him to the door of his house and again beat him ; and on Banchanedhee Jenna (witness No. 1) asking the cause of their doing so, Dass Swaine replied, that it was no business of his, that he would kill him and give his own life also ; and they paid no attention to the remonstrances of the witnesses, but beat him the more ; and at this time Bhagbut Swaine, the son of the deceased, having made his appearance, Dass Swaine struck him a blow with his stick, and Musst. Maltee becoming alarmed, went with her son and shut themselves up in the house, where they were shortly afterwards followed by the prisoners, who broke open the door of the apartment in which they were, stripped Musst. Maltee of her ornaments, and set too to plunder the house ; and Musst. Maltee and her son having made their escape, went to the place where the husband was and found him lying dead ; and the chowkeedar having by this time arrived, the prisoners with their plunder took their departure. Information was communicated to the police early the following morning, and the darogah arrived at about 10 A. M. and apprehended the above-named prisoners and certain other persons who had been recognized while plundering the house.

Dass Swaine (the prisoner No. 1) made confessions to the following effect, both before the police and the magistrate :— That at about 10 o'clock on the night of the occurrence, having returned from Ultee, where he had been to purchase tobacco, he was sitting at the door of his house, when his mother informed him, that Baoree Swaine, the deceased, had beat her, because she called her neighbours to the assistance of Bunmallee Purrida's wife, when he was beating her ; and while he was reproving his mother for interfering, Muddun Purrida (prisoner No. 2) came and told him that his (Muddun's) uncle, Hurree Purrida, (prisoner No. 3,) was setting at his door with five or six persons and had sent for him. That he first

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objected to accompany him, but on his pressing him, he went and saw Hurree Purrida and Bhagbut Purrida (prisoner No. 4,) the former of whom made him make oath on the *mahapersaud*, that he would accompany him that night to kill Baoree Swaine, who had beat his (Dass Swaine's) mother and his (Hurree Purrida's) nephew's wife, and told him he had arranged that he and Hurree Dass, Gouree Dass and Gource Mullick, his *cooteah*, Muddun Purrida and Bhagbut Purrida, were to go with them. That he then returned to his house, where he was followed by Muddun Purrida and Bhagbut Purrida, and after them came Hurree Purrida, bringing with him Hurree Dass, Gource Dass, Purree Purrida (prisoner No. 6,) and Gouree Mullick, all of whom had sticks in their hands; and they were all sitting in front of his cow-house, when Hurree Purrida called him and told him that he had ascertained from Bassoo Purrida's wife, that Baoree Swaine was sitting at Kooroop Swaine's *choura*, and they were to go there and kill him. That he then took a stick in his hand and accompanied the others, and saw that Baoree Swaine had left Kooroop Swaine's and had arrived near his own house, where Bhagbut Purrida first struck him a blow across his loins; and on his calling out for the people to run to his assistance, that he was being killed, he (Dass Swaine) struck him on the back with his stick, when the deceased seized him by the hair, and they fell together on the ground; and while he was down, Hurree Purrida, Muddun Purrida and Bhagbut Purrida beat him with their sticks, and on his letting go of his (Dass Swaine's) hair, he got up; and on the deceased's calling out, Bhagbut Purrida tied a cloth round his mouth and they four dragged him along the ground, Muddun Purrida beating him with his stick as he went along, as far as his (Dass Swaine's) cow-house, where, observing that he was almost dead, he (Dass Swaine) loosed his *gumcha* or cloth from his mouth, and he got up and crawled to his house, threatening to call Hurriah (Hurree Purrida) to account the next day. That he and Hurree Purrida, Bhagbut Purrida and Muddun Purrida then again seized hold of him and beat him with their sticks and fists, and he fell in front of his door, when Banchandedhee Jenna and Bunmalee Jenna and Kooroop alias Kirpasindoo Swaine (witnesses Nos. 1, 2 and 3) arrived; and on their enquiring what was the matter, they all went to his (Dass Swaine's) door, and the above persons took the deceased into his house and gave him water to drink, when Hurree Purrida then proposed that they should go and beat again and disable him, so that he would not be able to move, otherwise he would complain against them the next day; and Hurree Purrida, Muddun

Purrida, Bhagbut Purrida and Purree Purrida (prisoner No. 6,) and he (Dass Swaine) went to the deceased's house, where Bhagbut Purrida gave a rope which he had brought with him into the hands of Hurree Purrida, who threw it over his chest, while he (Dass Swaine) scized hold of him by the hair and others by his legs and arms and dragged him, beating him as they proceeded to the road, near his (Dass Swaine's) house, when Bhagbut struck him a blow on the head, which killed him. That they then all went to his (Dass Swaine's) cow-house, where Hurree Purrida proposed that they should go and plunder his house, saying, that if they had no money, they would not be able to complain; and they accordingly went and forced their way into the house and plundered it, *viz.*, he and Hurree Purrida, Muddun Purrida, Bhagbut Purrida and Purree Purrida entered the house, while Hurree Dass, Gource Dass and Gource Mullick remained outside to receive the property; and as they were plundering the house, the chowkeedar arrived, and they all absconded, carrying away with them such articles as they were able, and deposited them in the house of Hurree Purrida, whence he (Dass Swaine) went home, and was the following day apprehended, and at first denied, but subsequently confessed and caused the property to be produced.

The foudaree confession of the above prisoner does not enter quite so fully into the details of the murder and robbery as his mofussil confession, but it is in all material respects the same.

Purport of the mofussil and foudaree confessions of Muddun Purrida (prisoner No. 2.)—That at about 7 o'clock on the night of the occurrence, Dass Swaine came to his house and told him that Bummalee Jenna, Banchanedhee Jenna, Sadoo Maintee and Kooroop (Kirpasindoo Swaine) had called him; that he accompanied him to Bummalee Jenna's door, where he saw the above persons and also Hurree Dass; and they all made oath by placing their hands on a leaf containing some *mahapersaud*, and caused him to do likewise, that they would that night kill Baorce Swaine and plunder his house, and no one was to disclose the matter to any one. That they then all (himself empty-handed) and Muddoo Maintee, Buggee Jenna, brother to Banchanedhee Jenna, Juggoo Swaine and Dass Swaine, with sticks in their hands, went and sat at Dass Swaine's cow-house, where they were joined by Hurree Dass, Bummalee Jenna, Sadhoo Maintee, Kooroop Swaine, Banchanedhee Jenna and Gource Dass, who were also empty-handed; and observing that *sutcenarain poojah* was being performed in Baorce Swaine's house, they waited till it was over, when Kooroop Swaine called Baorce Swaine

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towards his house (Dass Swaine laying in wait for him on the road with a stick in his hand,) and as he was returning from Kooroop Swaine's house, followed by the said Kooroop Swaine, and had reached the cross-paths in front of his own house, Dass Swaine struck him a blow with a stick across his back ; and on his falling to the ground, all the above-named persons ran up and surrounded him, and Muddoo Maintee, Buggee Jenna and others beat him with sticks, and dragged him along the ground from his own house to Dass Swaine's cow-house, whence he made his escape and went back to his own house, and his wife closed the door ; but on Muddoo Maintee's calling to her, she re-opened it, and he (Muddun Purrida) Dass Swaine, Juggoo Swaine and Buggee Jenna and others ran up to beat him, and some laid hold of him by the hair and others by the hands, and dragged him, beating him as they went along to Dass Swaine's house, where Dass Swaine struck him a blow on the head and he fell speechless, on which Dass Swaine brought first some water and afterwards something which smelt like *shrab* and gave him to drink, and they all left him and went and sat in Dass Swaine's cow-house, whence Dass Swaine, Banchanedhee Jenna and others told them to go and plunder the house. That they accordingly went there, and Dass Swaine got over the wall and let in the others by the *baree* door, when Dass Swaine broke open the door of the apartment in which the deceased's wife was, stripped her of her ornaments as she was making her escape ; and then with him, Muddun Purrida, Juggoo Swaine, Bunmalee Jenna, Buggee Jenna and Muddoo Maintee entered and plundered it, while Gourree Dass and Hurree Dass remained at the door to receive the property ; and while they were thus engaged, the deceased's son came and called, "Here they are, here they are," or words to that effect, and they absconded, taking with them what they could, and he (Muddun Purrida) and Dass Swaine, Bunmalee Jenna and Muddoo Maintee went to his house, where Bunmalee Jenna placed the *cuprah* and *kangas*, &c., and told him to take care of them until the following day when he would remove them ; and Dass Swaine concealed a sword in his (deponent's) *chupper*, after which they dispersed to their own houses, and he remained at home, till hearing from his grand-mother that Baoree Swaine was dead and that the darogah had arrived to enquire into the case, he then took the *bunat* and other property and concealed them in a large earthen vessel inside the house of Nidhee Gwalla, where he himself was discovered and apprehended together with the said property.

The above prisoner denies in his foudaree confession, that he took an active part in the murder of Baoree Swaine, but

admits that he was present looking on, and likewise acknowledges being a principal in the plunder of his house.

Purport of the mofussil and soujdaree confessions of Hurree Dass (prisoner No. 5.)—That on the last poorneema, at about 11 o'clock at night, Dass Swaine came to his house, awoke him from sleep and told him that he and Bhagbut Purrida, Muddun Purrida, Hurree Purrida and Purree Purrida had beat and bound Baorce Swaine and were going to plunder his house, and he was to accompany them. That he at first objected to go, but Dass Swaine laid hold of his hand and promising to give him something, took him along with him; and he stood in the deceased's plantain garden, while Dass Swaine, Muddun Purrida, and Bhagbut Purrida, entered the house and brought out the property and collected it in the said garden, and he afterwards carried one *oleah* of *dhan* on his head, and Dass Swaine another, to his house, when Dass Swaine told him to take care of them for him and he would give him eight annas, and he took charge of the said *oleah* and stayed at home, and Dass Swaine went and brought some *lotahs*, *thalees* and other things, and told him to take care of them likewise, but he objected to do so, and he placed them in an earthen vessel among some bamboo jungle and went away. He then went to sleep, and heard the following day that Baoree Swaine was dead, and after the arrival of the darogah, he produced the two *oleahs* and pointed out the place where Dass Swaine had placed the *lotahs*, &c. But he took no part in beating deceased, nor did he enter his house, and on being further questioned by the police as to the parties concerned, he said he saw Purree Purrida at the deceased's *baree* door.

Purport of the mofussil and soujdaree confessions of Purree Purrida (prisoner No. 6.)—That he did not kill Baorce Swaine. On the night of the *poorneema*, there was a *poojah* at his house, at which he was present at his invitation; and on its conclusion, he went home and retired to rest. That about 11 o'clock, Dass Swaine came and called him to accompany him to plunder Baoree Swaine's house, and on going, he saw Baoree Swaine lying dead near Dass Swaine's house, and Bunmalee Jenna, Banchaneeheh Jenna, Buggee Jenna, Kooroop Swaine, Juggoo Swaine, Sadhoo Maintee, Muddoo Maintee and Gungadhur Maintee, who were sitting in the deceased's verandah, and Dass Swaine, Hurree Purrida, Bhagbut Purrida and Muddun Purrida told them to come and plunder the house. That he and Hurree Dass and Gouree Dass stood near the *baree* door, while the others went inside and brought out the property, which they collected in the deceased's plantain garden; and while they were thus engaged, the deceased's son having called out that they were plundering

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the house, they absconded, carrying with them what they could lay hold of, and he and Mudloo Maintee and Bummalee sat in the *gor* or dry bed of a river, and saw the others take the spoil to Hurree Purrida's house; and he afterwards went home and went to sleep.

The witnesses, Nos. 1, 2, 3, 4, 5 and 25, deposed generally to the facts related in the confessions of the different prisoners and they all distinctly deposed to the prisoners, Nos. 1, 2, 3 and 4, having assaulted the deceased, and to Purree Purrida (No. 6) having been standing close at hand at the time, and witnesses Nos. 5 and 25 further stated that the said Purree Purrida assisted the others in pulling the deceased from his house. Witnesses Nos. 1, 2, 3 and 4 likewise deposed to a portion of the plundered property having been found in the houses of Hurree Purrida (the same being the joint abode of himself and his nephews (Muddun Purrida and Bhagbut Purrida) and Hurree Dass and other places in their precincts, at the indication of the said Bhagbut Purrida and Muddun Purrida and Dass Swaine.

Witnesses Nos. 1, 2 and 3 likewise deposed to the correctness of the report of the inquest on the body of the deceased, held by the police darogah, from which it appears there was a wound three fingers breadth in length, one in breadth and depth on the head, and numerous other marks of beating on various parts of his body.

Dass Swaine (prisoner No. 1) pleaded *not guilty* before this court, and on being called on for his defence, he in a confused manner stated that Banchanee Jenna (witness No. 2,) Bummalee (witness No. 1,) Buggee Jenna, Gobind Ghooec, Juggoo Swaine, Kirpasindhoo Swaine (witness No. 4,) Mudloo Maintee, Sadhoo Maintee (witness No. 5,) Manoo Dass, and five other villagers bore the deceased Baoree Swaine enmity, in consequence of his leaguing with the *balgashtee* or inspector of the Aul Rajah, and acting as informer against them, and getting them mulcted on different occasions when they quarrelled with another, or were guilty of any breach of conventional rules; and also because he dispossessed Bummalee Jenna from his land; and for these reasons Banchanee Jenna, Buggee Jenna and Bhujnee Jenna killed him.

Muddun Purrida (prisoner No. 2) pleaded *not guilty* before this court, and in his defence stated that all the villagers plotted together and killed the deceased, but he was not present, having been attending *poojah* at Anundee Sahoo's house, where he remained till 3 A. M. and then went home. That after bathing, the next day he went to graze his cattle, and on returning home at about 2 P. M. seeing that the darogah had arrested his uncle and his brother, he went to Nidhee Dass'

house and stayed there, when Nidhee's sister, Soobhee Gwallin, told him that two persons, whom she did not know, had placed some property in her *ghoom* (a large earthen vessel,) and he told her he had seen Juggoo Swaine and Buggee Jenna coming from the direction of her house and that they must have placed it there; and Soobhee being indebted to him in the sum of rupees 10, at the tutoring of those two persons, said that he placed the property in her house.

Hurree Purrida (prisoner No. 3) pleaded *not guilty* throughout and was most vociferous in his protestations of innocence before this court, and endeavoured to prove an *alibi*, inasmuch that he alleged he was engaged going to and fro his village, (which is separated from that of the deceased by a dry nullah,) throughout the night of the occurrence, endeavoring to procure security for a debt due by him to his zemindar, Abbemannoo Jenna, though he altogether failed in establishing the fact. He further stated, that three or five years since, the witnesses who had given evidence in this case committed a dacoity in his brother Bassoo Purrida's house, and his brother complained to the magistrate, who was at the time making a tour in the district, implying thereby, that they had accused him through enmity in consequence of his brother's complaining against them.*

Bhagbut Purrida (prisoner No. 4) pleaded also *not guilty* throughout, and stated that he was at a poojah in the house of Anundee Sahoo till about 1 A. M. on the night of the occurrence, and then went home. Also, that the witnesses falsely accused him, because he is a nephew of Hurree Purrida, though he lives in a separate house, because the said Hurree Purrida and his brother Bassoo Purrida charged the said witnesses with committing a dacoity in their house.

Hurree Bass (prisoner No. 5) pleaded *not guilty* before this court, but stated that towards morning on the night of the *poorneema* in Bysakh, Juggoo Swaine and Sadhoo Maintee (witness No. 5) awoke him from his sleep and told him to take charge of two *oleas* or bundles of *dhan*, which they had brought from Baoree Swaine's house, and that Dass Swaine would give him eight annas for doing so, and that he refused to do so, as they were stolen property, and that the said persons had previously been apprehended for robbery in Bassoo Purrida's house; and he shut the door and again went to sleep. That the next day he heard Baoree Swaine was dead, and at noon he was summoned before the darogah at the prosecutrix's house,

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* This prisoner repeatedly interrupted the court during the investigation of the case, and charged the witnesses with having, in concert with Dass Swaine, killed the deceased.

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where his hands were tied together with an *angocha* or towel, and the following day his house was searched and nothing found therein ; but near to some grass in his garden were found the two *oleas* which Juggoo Swaine and Sadhoo Maintee had placed there ; and the day following that, some one having given information to the darogah, a *thalee* and *kangsa* were produced from an earthen vessel in his *bageecha* ; but who placed them there, he did not know.

Purree Purrida (prisoner No. 6) pleaded *not guilty* before this court, and on being asked what he had to say in his defence, stated, that after attending the *poojah* at the deceased's house, he went home and was asleep, when Dass Swaine called him to plunder Baoree Swaine's house, whither he took him by force ; and when Dass Swaine went into the house, he (the prisoner) went back to his own and again went to sleep. And in the morning he was told by Dass Swaine, that when the darogah came he was to say he saw Banchanedehee Jenna, Koorooh Swaine, Gungadhur Maintee and Juggoo Swaine at night in Baoree Swaine's verandah, and that he (the prisoner) himself stood five *hath*s distant from the lane, and that he (Dass Swaine) would not himself name Juggoo Swaine and Bunmallee Jenna, and told him to do so, and to say that he saw Baoree Swaine lying dead on the road, also that Dass Swaine told him that Hurree Purrida, Muddun Purrida, Bhagbut Purrida, Juggoo Swaine, Buggee Jenna and Bunmallee Jenna plundered the house, and otherwise tutored him, and that the other defendants accused him because Hurree Purrida is his uncle.

The prisoners Nos. 1, 2, 3 and 4 cited witnesses in their defence, but none of them said any thing in their favor ; and the witnesses to the mofussil and foujdarree confessions certified that they were all voluntarily made.

The civil surgeon was unable to depose to the cause of death, owing to the advanced state of putrefaction of the body at the time he saw it ; but he observed an incised wound on the crown of the head, dividing the scalp, but not penetrating the skull. He however stated that the brain might nevertheless have been injured and caused death.

The law officer, on the grounds of the evidence of the eye-witnesses, the mofussil and foujdarree confessions of the prisoners Nos. 1, 2, 5 and 6, and the finding of the property in the houses of Nos. 2, 3 and 5, (Nos. 2, 3 and 4 living in the same house or enclosure and No. 4 having pointed out some of the plundered property in the house of No. 3,) and the answers of Nos. 5 and 6 before this court, convict the prisoners Nos. 1, 2, 3 and 4 of the culpable homicide of the deceased Baoree Swaine ; Nos. 1, 2, 3, 4, 5 and 6 of plundering the property of the deceased from his house ; and Nos. 2, 3, 4 and 5 of

having part of the plundered property in their possession, knowing it to have been so obtained.

From the above verdict I dissent, so far as relates to the nature of the crime proved, for I am of opinion, that the higher crime of wilful murder, and that under very aggravated circumstances, has been established against the prisoners Nos. 1, 2, 3 and 4, by the evidence of the eye-witnesses and the general circumstances of the case. The guilt of the prisoners, Dass Swaine (No. 1) and Muddun Purrida (No. 2) is proved by their own confessions, both before the police and the foudaree court, in addition to the evidence of the eye-witnesses; and although the impression left on my mind, by the various confessions of the prisoners and the general circumstances attending the case, more especially the fact of the witnesses having, as generally admitted by themselves, permitted the above cited prisoners to drag away the deceased a second time and kill him, after he had been once rescued and got back to his house, and likewise allowed his house to be plundered, without offering any resistance, though requested by the prosecutrix to interfere, is that the witnesses were directly or indirectly concerned in the murder. I do not see sufficient evidence to set aside their evidence, inculpating the prisoners Hurree Purrida (No. 3) and Bhagbut Purrida (No. 4,) for though Hurree Purrida, as has already been noted, was most clamorous in his protestations of innocence, it is manifest from his own showing (notwithstanding he unsuccessfully endeavored to prove an *alibi*,) that he was at his village about the time the murder and robbery took place. Moreover, it is evident, that he and his nephews, Muddun Purrida and Bhagbut Purrida (prisoners Nos. 2 and 4) live in the same house or premises, whence a considerable portion of the plundered property was transferred by the said Muddun Purrida to the house of Nidhee Dass, on the approach of the darogah to investigate the case, and not only was a *peeree* containing *talputro* documents produced from their house by the mother of Hurree Purrida, on the demand of Bhagbut Purrida, but Bhagbut Purrida produced a sword from the *chupper* of the house, alleging that it had been placed there by Dass Swaine. The foregoing remarks have reference more immediately to the guilt of Hurree Purrida, but the part therein shown to have been taken by Bhagbut Purrida, in producing the stolen property, at the same time corroborates the testimony of the eye-witnesses as to his (Bhagbut's) participation in the crime.

Hurree Dass and Purree Purrida also stand convicted on their own confessions before the police and the foudaree court, of having taken part in plundering the house of the deceased and several articles of plundered property were received from

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the premises of the former of the two prisoners. I would therefore convict the whole of the prisoners of the several counts charged against them, and recommend that Dass Swaine (No. 1,) Muddun Purrida (No. 2,) Hurree Purrida (No. 3,) and Bhagbut Purrida (No. 4,) be sentenced to imprisonment in labor and irons in transportation beyond sea for life; and that Hurree Dass (No. 5) and Purree Purrida (No. 6,) to imprisonment with labor and irons for fourteen (14) years in the district jail. It is not usual in cases like the present, where, among several parties concerned, the death of the deceased cannot be fixed on any particular individual, to sentence any of them capitally, otherwise the aggravated circumstances of the case would have justified my recommending such a sentence to be passed on Dass Swaine and perhaps on No. 2 likewise.

Under the circumstances of the case, the joint-magistrate should, in my opinion, have committed Purree Purrida as an accomplice in the murder of the deceased.

The case referred to in the defence of Hurree Purrida, in which Bassoo Purrida, his brother, was prosecutor, and Kooroop Swaine, Muddoo Maintee, Gungadlur Maintee, Bunnallee Jenna, Banchanedhee Jenna, who are witnesses in the present case, were defendants along with the deceased Baoree Swaine, is also herewith forwarded, as it shows that a charge of plunder was preferred as alleged by the prisoner, though his name does not appear as having been personally interested in the case.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. R. Colvin.)—It appears from the investigation held by the police, from the statements made before them, and from the depositions of the eye-witnesses in the foudaree court, that the prisoners Nos. 1, 2, 3, 4, with others, entered into a solemn agreement to kill the deceased; that on the night of the full moon of the 23rd May last, about midnight, they seized and beat him, but desisted on the interference of the eye-witnesses, who took up Baoree Swaine, carried him to his house, where, after a while, he revived and began to abuse the prisoners Nos. 1 and 3 by name, for having maltreated him; upon this, the witnesses go on to say, the prisoners returned and renewed their attack, some dragged Baoree with a rope which was fastened under his arms, others beat him with bamboo clubs, the marks of which covered his whole body, until at length he received a blow on the head, which felled him to the ground, and his assailants then ran off.

The witnesses again attended on the wounded man, but could not recover him, and he died early in the morning. The sessions judge has given a full account of the evidence of these witnesses and of the facts of the case, an abstract of all

the circumstances connected with it will also be found in the letter of reference annexed.

That there was enmity between the prisoners Nos. 1 and 3 and the deceased is satisfactorily proved; No. 1 is the deceased's younger brother, and had disputes for some years past with him about some lands; No. 3 had also differences with him on the same subject, the deceased having got into his possession a *jote*, which the prisoner had formerly held.

Prisoners Nos. 2 and 4 are brothers; No. 3 is a relative; and they all live together and in the same house.

Prisoner No. 1 confessed in the mofussil and before the magistrate. These confessions disclose, that the parties who assailed the deceased, all made oath on the *mahapersaud*, that they would kill him; they show that the prisoner, with others, took an active part in seizing, holding, dragging and beating the deceased on the first, and also on the second occasion of his being assaulted, from the effects of which last assault, as the evidence clearly shows, Baoree died; that they all then proceeded to plunder the house, which they effected, and that some of the property was found on him.

Prisoner No. 2 does not go so far as the last prisoner, but he confesses that he went with him to the party who swore on the *mahapersaud*, to kill the deceased and to plunder his house; that he and the others watched for the return of the deceased after the *poojah* was over, when he and others beat him and dragged him towards the house of No. 1 and afterwards plundered the hut of deceased: in the soujdaree court, he denies having taken an active part. Prisoners Nos. 3 and 4 have pleaded *not guilty* throughout, but the prosecutrix, her son (a lad of fourteen years of age,) and all the eye-witnesses have distinctly sworn to their having been present and active in the assault on both occasions.

Prisoner No. 5 confessed to having accompanied No. 1 to plunder deceased's house and to having concealed a portion of the property. The prisoner is not named as being present at the murder. Prisoner No. 6 confessed as above, adding, he went to the spot and there saw Baorce lying dead.

The murder was no doubt a deliberate and most cruel one. The prisoners Nos. 1, 2, 3 and 4 are clearly proved to have been the individuals who actually committed the assault. It is doubtful what part each took in the murder, and there is no sufficiently clear proof as to who was its main contriver or instigator. We shall not, therefore, go beyond the scale of sentences recommended by the sessions judge.

We convict all the prisoners, Nos. 1, 2, 3 and 4, of being accomplices in the wilful murder of Baoree Swaine, and sentence them to imprisonment for life in transportation.

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The offence of the prisoner No. 5 amounts, we think, to participation in the plunder of the deceased's house, after he was assaulted and left senseless. This prisoner accompanied the party, was in the garden, and carried off to his own house some of the property, of which he took charge for a consideration.

The prisoner No. 6 is guilty to the same extent; he too went to the garden and stood near the door of the house, while the others entered and plundered it. We sentence the prisoners Nos. 5 and 6 for the above offence to fourteen (14) years' imprisonment with irons and labour.

PRESENT:
A. J. M. MILLS, Esq.,
AND
H. T. RAIKES, Esq., } *Officiating Judges.*

GOVERNMENT

versus

AMAN ALEE KHAN (No. 37,) **MOSSARUT ALEE KHAN** (No. 38,) **SYED IMAM ALEE** (No. 39,) **JOWAHIR ALEE KHAN** (No. 40,) **MEAHN ARJOONUND** (No. 41,) **MEAHN AFERKEEN** (No. 42,) **MEAHN BELAL** (No. 43,) **MEAHN IKBAL** (No. 44,) **HAJEE TAMASH** (No. 45,) **MAHOMED FURREED** (No. 46,) **MIRZA MAHOMED HOSSEIN ALIAS MOGUL JAN** (No. 47,) **JOOMUN SHEIKH** (No. 48,) AND **PEER KHAN** (No. 49.)

CRIME CHARGED.—1st count, wilful murder of Hingoo and Muddee; 2nd count, accessories before and after the fact; 3rd count, privity to the said crime; 4th count, torturing and beating the said Hingoo and Muddee, deceased; 5th count, aiding and abetting in the said torture and beating; 6th count, privity to the said torture and beating; and 7th count, prisoner No. 37, with issuing orders for the said torture and beating.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 7th September 1853.

Remarks by the sessions judge.—The prisoners pleaded *not guilty*.

The history of this painful case is briefly told. The time occupied does not extend over more than five or six days. His Highness the Nawab Nazim of Moorshedabad, during a shooting excursion in the district of Maldah, pitched his camp on the 30th March last at a village called Purampore. On the 3rd April the camp proceeded to Allal, and from thence on the 5th April to Gajole, both villages in the same district.

Two men, Hingoo, a *faqueer*, and Muddee, whose father is a *gholam* in the service of the Nizamut, accompanied the camp.

The prisoners No. 37 Aman Alec Khan, No. 38 Mossarut Alec Khan, No. 39 Syed Imam Alec, No. 40 Jawahir Alec Khan, No. 41 Meahn Arjoonund, No. 43 Meahn Belal, No. 44 Meahn Ikbal, No. 45 Hajee Tamash, and No. 47 Mirza Mahomed

the prisoners during a shooting excursion. The case having been referred to the Court, owing to a difference of opinion between the sessions judge and his law officer, as to the degree of guilt in the prisoners, the Court convicted five prisoners of culpable homicide and sentenced them to fourteen years' imprisonment in banishment. The other prisoners were acquitted.

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The prisoners, who were the attendants of the Nawab of Moorshedabad, were charged with the wilful murder of, and with other counts of torturing and beating two men, who had been suspected of stealing a box containing property to the value of rupees 70, from the tent of one of

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Hossein *alias* Mogul Jan, formed a part of His Highness' suite ; No. 42, Meahn Afereen, had joined the camp, having been sent on a special errand by the nawab begum sahib ; No. 46, Mahomed Furreed, was a camel-driver ; No. 49, Peer Khan, a *mahout* in His Highness' service ; and No. 48, Joomun Sheikh, was the servant of No. 39, who was the aruz-beggee of His Hghness ; the prisoner No. 38 holding also high office in the Nizamut, and the prisoner No. 37 was the chief and confidential eunuch, having the general control over all His Highness' arrangements during this excursion.

The three principal tents in the camp belonged to His Highness, Aman Alee Khan and the eunuchs. His Highness occupied the centre tent, on one side of which was the tent of Aman Alee Khan and on the other the tent of the eunuchs. They were generally pitched at a short distance from each other.

On the morning of the 31st March, while His Highness, with the greater part of his suite, was shooting at Puranpore, a tin box, containing property to the value of above rupees 700, belonging to the prisoner No. 41, was missing. Hingoo and Muddee were seized on suspicion of having stolen the box, and throughout the day, before and after His Highness' return, it would appear, were tortured and beaten for the purpose of inducing them to confess and point out the property.

The same night Muddee was conveyed upon a camel to a place called Nogurreah, about eight or nine miles from Puranpore, that he might point out a *ghareewan* to whom he said he had given the property. He was there unmercifully beaten, when he declared he had not given the property to the *ghareewan* but to two *nautch* girls at Puranpore, upon which he was again placed upon the camel and brought back, part of the way on the camel and part on an elephant, to the camp at Puranpore.

On the 3rd April the two men were taken with the camp to Allal, and again on the 5th from Allal to Gajole, where the same day Hingoo died and Muddee the day after.

It was given out in the camp, that these men had died of cholera, and it was not until the 1st May following, that the darogah of Shananuggur, in the city of Moorshedabad, reported to the magistrate that he had heard that a murder had been committed in the camp, but that no one came forward to prosecute.

The orders which he received from the magistrate led to enquiry, and enquiry led to disclosure, which formed grounds for the trial before the magistrate, terminating in the commitment of the prisoners to the sessions court on the charge of murder and other lesser counts.

Having given a brief outline of the case, I will revert to the evidence upon the record.

The witness who enters more fully into detail regarding the tortures to which Hingoo and Muddee were subjected is Hosseinee Sheikh (witness No. 5 on the calendar.) He was the personal servant of the prisoner No. 41, and was permitted to turn Queen's evidence. His statement before the sessions court is to the following effect :—

"I am servant of Meahn Arjoound (prisoner No. 41.) I had a tin box under my charge belonging to my master. One morning I was asleep; burra sahib (absent) and Mogul Jaan (prisoner No. 47) were sitting inside my master's tent. About 8 or 9 A. M. I awoke and missed the box, and asked them about it. They said they did not know where it was. I told them I was sure they had hidden it. They denied this and said as I had given them a bad name, I should be punished when the thieves were caught. Burra sahib and prisoner No. 47 went out and brought in Muddee. I did not go with them. Muddee was questioned about the theft, but would not confess. He was then taken and tied inside the tent, and because he would not give up the property, burra sahib and prisoner No. 47 beat him with a *corah*. They continued beating him, till he promised, if they left off, he would show where the property was. He then said it was with Hingoo, and he would show them where Hingoo was. They loosened him and took him to the indigo factory, where the *saqueers* lived. Not finding Hingoo there, they brought Muddee back to the tent and again beat him, till he told them Hingoo was under a tree near the kitchen tent. They went out, and I saw them bring Hingoo to the tent. They said they had found him sleeping under the tree near the kitchen. Muddee told him to confess about the property, as they were taking away his life. Hingoo denied having taken the property. They then tied Hingoo and began to beat both. Muddee entreated them not to beat him more, and said he would show where the property was placed. They took Hingoo and Muddee with them to the river-side, and not finding the property, brought them back, beating them, and began again to beat them in the tent. Muddee then said he would show them the property at a shop at Puranpore, where Hingoo had concealed it under some grass. Not finding it there, they again brought them back, beating them. Muddee said he would show it near the indigo factory. They took them there, while I remained in the tent. They again brought them back, beating them. Muddee then said he would show it under the sand near the river amongst some thorn-bushes. They took them there and were searching. When His Highness returned from hunting

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I saw them searching. The river was about one or one and a half *russee* from the tent. His Highness went into his tent and Aman Alee Khan (prisoner No. 37) into his, and the meahns into theirs. My master (prisoner No. 41) saw me crying and asked me what was the matter. He called out Hossinee three times. I mentioned about the theft; and upon his asking where the thieves were, I pointed out where burra sahib and prisoner No. 47 were bringing them. The meahns said to the thieves, 'Why do you suffer yourselves to be beaten? Give up the property.' They would not confess. The meahns then went to the tent of prisoner No. 37, and I went with them. Prisoner No. 37 ordered them to be beaten till they produced the property. He called out "Beat them! Never mind if they die, one is a *chela* in His Highness' service, and the other a *faqueer*, if they die, we can say they died of cholera." The meahns then went to their tent, and Meen Imam Alee (prisoner No. 39,) Meahn Iqbal (prisoner No. 44,) Meahn Belal (prisoner No. 43,) Meahn Afereen (prisoner No. 42,) and Mossarut Alec Khan (prisoner No. 38) began together to beat them. By the order of prisoner No. 39, Peer Khan (prisoner No. 49,) brought a *cutcha beyt* with thorns on it, and they tied the thieves inside the meahns' tent and beat them. Muddee then said the property was in a garden. They took them to the garden and there searched, but found nothing, and brought them back to the tent and beat them. They tied their hands and feet and beat them with the *beyt* and the *corah*. The prisoner No. 39 again took them to the garden, and afterwards Joquin Sheikh (prisoner No. 48,) servant of prisoner No. 39, and prisoner No. 49, kicked them; and prisoner No. 39 took them with the *mchter* and told them, they should be beaten with his *jharoo* if they did not give up the property. Not finding it in the garden, they brought them back and tied them to the tent-pins of the meahns' tent and began to beat them. Burra sahib and prisoner No. 47 made sharp wedges and drove them through their fingers, their hands being tied. The feet and hands were tied to separate tent-pins." (*The witness showed in court the way in which they were fastened.*) "They loosened them after awhile, when they cried out for water. Prisoner No. 39 said they should have urine for water. About 2 p. m. they tied them again and took them inside the tent. The meahns told them if they would point out where the tin box was, they would give them water and heal their wounds. Hingoo declared he knew nothing about the property. Muddee said he had given it to Hingoo. They again tied them up to the two tent-poles, with their heads downwards and their feet uppermost, and beat them with the *cutcha* thorn *beyt*. They all beat them." (*The witness*

points out the prisoners Nos. 47, 44, 43, 42, 39, 38, 49 and 48.) "Prisoner No. 41 was there, threatening but not beating. Hajee Tannah (prisoner No. 45) was there, but did not beat. I did not see Mahomed Furroo (prisoner No. 46.) I saw Jowahir Alee Khan (prisoner No. 40) there, but he did not beat. They were beaten all along in the *same* tent. The prisoner No. 41 and meahns live in the *same* tent. On the fourth day, the camp left Puranpore and proceeded to Allal. They took the thieves with the camp, one in a *meanch* and the other in a *suggur-gharree*. They beat them again there. Muddee said that Hingoo had informed him, that the property would be found under a certain tree at Puranpore. Burra sahib and prisoner No. 48 went there on an elephant. Muddee was conveyed in a *meanch*. God knows what they did there. They went early and returned late in the evening. Burra sahib and prisoner No. 48 said, they had been worn out by searching for the property and could find nothing. Then burra sahib, in the tent, trod with his feet upon Hingoo's chest. Hingoo begged him to cut his throat, but not to tread upon him. Burra sahib, with prisoners Nos. 39 and 47, said that until he showed the property, they would beat him to death. They then brought Joomuck doctor, and prisoner No. 39 told him to give them some brandy to drink and to use some as an application. I saw a little mixed with a poultice and a little drank by them. They were then inside a *pal*, on one side of the meahns' tent, near the *bottle-khana*. After staying four days at Allal, the camp proceeded to Gajole. About noon of the day on which they reached Gajole, Hingoo died. The prisoner No. 39 and the rest threatened Muddee with the same fate, unless he disclosed where the property was, telling him that he was a *chela* of the *huzoor* and the other only a *faqueer*, that they would not take him back again, but cut his throat and bury him there. During the night he was very weak and died in the morning. They buried Hingoo about 3 p. m. near a bamboo jungle: they buried Muddee about 8 or 9 a. m. near a gallows. Muddee's father was a *gholam* (slave) in His Highness' service and Muddee a *chela*. Burra sahib and prisoner No. 47 said Muddee had once come to the meahns' tent, and therefore suspected that he had stolen the property. Hingoo's left hand was broken and the skin of both feet torn off. The thieves died from the violence of the beating. Hingoo was about forty or fifty years old and Muddee about twenty years old. No property was ever found. My master still retains me in his service. I saw prisoner No. 37 come one evening to the meahns' tent and threatened the prisoners, but he did not order them to be beaten."

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The most rigid cross-examination by the counsel for the defence did not shake the witness' evidence.

How far it is corroborated by the testimony of other witnesses will appear from a brief abstract of what they deposed to from their own knowledge.

Sheikh Dhunnoo (witness No. 1 on the calendar) states that one afternoon (about 9th Cheyt,) he saw Muddee and Hingoo tied up at the tent of the meahns, with their hands bound behind them and their feet fastened with separate cords to the tent-ropes in front of the tent; that on Muddee's declaring the property was near the river (which he did because he was thirsty and wanted to drink) both the men were taken there and brought back, as nothing was found; that information was sent to His Highness, who was out shooting, and who returned about 1 p. m. and sent for them and questioned them regarding the theft; that prisoner No. 37 threatened to have them shot if they did not give up the property, and that when His Highness ordered them to be released, he ordered them to be tied up. The next morning the witness saw Muddee's hands and feet torn by tent-pins and bleeding, and he was burnt all over his left arm and shoulders and from the knees to the feet. He saw marks of beating on Hingoo when they were leaving Puranporo for Allal. They tried to place the thieves in *suggur-gharees*, but could not manage it: they cried out so much, and were obliged to put them in *majolah-gharees*. After staying two days at Allal, the camp proceeded to Gajole, where he heard Hingoo was dead. Muddee died the same night. Next morning saw Jeboo Shuhada burying some one and helped to dig. Saw the corpse of Muddee. Burra sahib (not present) was there. He brought the burial clothes to be put upon the body. Shere Alee, *faqueer*, and two *bheesties* were there. Witness took off the clothes that were on Muddee and put the other clothes on, and they buried him. He saw Hingoo's grave. Muddee was buried one *russee* distant from the encampment, and Hingoo one and a half *russee* off, in a *bamboo jungle*. When he saw Muddee and Hingoo tied up at the meahns' tent, he saw thereto the prisoners Nos. 42, 43, 45, 44, 47, 39, 41, 40, 37 and 49, as well as burra sahib. All the meahns beat them and the prisoner No. 37 gave orders. The witness did not know the names of the prisoners Nos. 43 and 44, but recognized them, from having seen them before, and pointed them out. He described the appearance of Hingoo's fingers and feet as having been torn by large wooden pins driven through them. This witness too was very severely cross-examined.

Hingun Khan, *cooree-saquer*, (witness No. 2 on the calendar,) saw two thieves tied up near the tent of prisoner No. 37 for stealing the property of the darogah of the *pal-khana*, and the prisoner No. 37 pare a bamboo and beat them both. Their feet were tied to the tent-pins and their hands bound before them. This was a little after 12 noon. One was Hingoo ; did not know the other. Hingoo was much older. Two days after at Allalghat, he saw both of them tied up near the cooking tent, and marks of burning on one of Hingoo's hands. On the fourth day the camp reached Gajole, where he heard both were dead. When the prisoner No. 37 beat the thieves, His Highness was in his own tent, and all the meahns in theirs. It was about one hour after their return from shooting.

Rahim Alee Sheikh (witness No. 9 on the calendar) states, that one morning, in the month of Cheyt, at Puranpore, a theft occurred in the tent of the prisoner No. 41, and soon after there was a noise ; and he went with others and saw two thieves tied up in front of the meahns' tent. Presently a crowd collected and the people of the tent began to call out "*Maro banchoot ko*," and to beat. He returned to his own duties. About 2 p. m. His Highness returned from shooting. There was a great uproar and people running about. The prisoners Nos. 37 and 41 returning at the time, asked what the *tamasha* was. The people at the tent told them that a box had been stolen. No. 37 called out "*Banchoot ko khoob maro* : make them confess where the property is." The thieves begged them not to beat them, and said they had concealed the property in the sand and would point it out. They took them to the sand and searched, but could not find. They then called out "*Banchoot ham log ko dhoop men douriah*," and beat them with a cane and a thorny branch of a *babool*-tree and the *corah*, and the *mehter* beat them with a *jharoo*, and they took them near the bazar to the sand by the river. They there beat them excessively, and when they fell from weakness, they ordered them to be tied by the feet and dragged ; after which they took them back to the tent, and witness went to his work. During the night, he heard cries of "*Duhai company ! duhai nawab sahib !*" The next day His Highness went out shooting. They brought the thieves out of the tent. They begged not to be beaten, and said the property was under a *kudum-gatch* towards the west, and they would show it. They took them there to a ditch and witness went with them. The witness saw them beaten there, and again brought back. The next morning, when His Highness was going out shooting, the prisoner No. 37 ordered the thieves to be well beaten. Witness saw the thieves brought out and beaten severely. They

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entreathed them not to beat them, and told them there was a sunken boat in the river, where the property was, and they would show it. They went to the boat; and as the thieves were searching for the property, they called out, "Look, they are not searching, they are drinking the water!" upon which they were taken to the dry ground and beaten with the *corah*, *beyt* and *jharoo*, all the way back to the tent, where they were tied up again inside. The witness saw the prisoners Nos. 42, 43, 44, 47, 48 and 49 beat the thieves when they were taken to the *kudum-gatch*. The prisoner No. 39 went with them. The witness saw the thieves taken in separate *doolees* from Puranpore to Allal and from Allal to Gajole. They belonged to the Nizamut, as well as the bearers. (*The witness describes the bodies of the men as being quite raw and colored from the beating, and the fingers without skin on : the eyes only escaped.*) The prisoner No. 41, as well as No. 37, gave orders for the beating. This witness was also cross-examined at great length.

Jinghoo Khan, *battah-burdar* in the service of His Highness, (witness No. 7 on the calendar,) saw Muddee and Hingoo bound one evening at Puranpore between 7 and 8 p. m. Prisoner No. 47 tied their hands behind them very tight, and on their calling out, prisoner No. 41 told him to tie them looser. A camel-driver took Muddee away on a camel to Nogurreah and brought him back to Puranpore the next morning on an elephant. Saw the prisoners Nos. 47 and 48 and burra sahib, with the prisoners Nos. 38 and 42, following behind, take Hingoo and Muddee to the factory, where he believes they were beaten. Heard cries one night, either from Hingoo or Muddee, of "*Duhai darogah sahib, duhai darogah sahib.*" From Puranpore to Allal, Muddee was sitting in a *gharee* belonging to the Nizamut. His body was covered, but he saw his foot, which was exposed. It was swollen. The prisoners Nos. 47 and 49 and burra sahib were on an elephant with Muddee, when he returned from Nogurreah. States his belief that the thieves died from the beating. The treatment of the thieves was spoken of in the camp, bazar, roads, and every where. Saw clothes in the hands of the burra sahib for the bodies of the men.

George Shopcott, coachman in His Highness' service, (witness No. 20 on the calendar,) was eye-witness to the beating of Muddee by the prisoner No. 46 at Nogurreah. He states that Muddee was brought there on a camel by the prisoner No. 46, a camel-driver, to enable him to point out the *ghareewan*, to whom he said he had given the property. He pointed out Junglee Ghareewan, who was about to be tied up, when the witness interfered in his behalf and he was released. But

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Muddee, in his presence, for fifteen minutes, was unmercifully beaten by the prisoner No. 46. He did not see Muddee again till he saw him and Hingoo at Gajole Hât. They were in the same *pal* and attended by Joomuck doctor, who, with the aid of the *mehter*, was applying turpentine and sweet oil to their legs and getting ready poultices. Hingoo then was dying, and Muddee was calling out to the people outside to bring water for him. The burra sahib was there all the time. The next morning he went again towards the *pal* and saw Muddee in a dying state. From his own tent he saw them both buried. The witness describes the appearance of Hingoo's body, when he saw him in the *pal*, that he was raw from the knee to the foot, raw in parts from the neck to below the waist, the skin was off and the body very much swollen. He describes Muddee also as being in the same state—"raw all the way down," when he saw him dying. When he last saw Muddee and Hingoo, there were no appearances of cholera.

Doolaul Hurkaru, (witness No. 12 on the calendar,) in the service of His Highness, was an eye-witness to the prisoners Nos. 39, 47, 48 and 49 and burra sahib taking the two thieves, with their hands bound, to the river and back, and beating them both going and returning.

Ghasoo Chobdar, (witness No. 11 on the calendar,) in His Highness' service, heard the noise of beating in the meahns' tent the day the two thieves were apprehended, and cries of "*Mari, bapri!* I will show the *mal*." Saw the next day the burra sahib and the prisoners Nos. 46, 47, 48 and 49, with Nos. 39, 42 and 43, taking the two thieves to a mango-grove and beating them, and bringing them back the same way, not having found the property, to the tent. Does not know what occurred in the tent. Saw them again about noon taken to the river-side and brought back the same way. He did not see Nos. 42 and 43 beat, and is not positive as to No. 39, though he saw a *beyt* or some instrument in his hand and believes he was beating. He went with the advanced tents to Allal and about 3 P. M. saw the thieves brought in a Nizamut *suggur-gharee* near the tents. Their feet were bound with bandages. Prisoner No. 37 gave all the orders and had all the arrangements about the *gharees*, tents, &c. When he witnessed the beating, he saw the thieves taken to the meahns' tent. The thieves always remained there.

Junglee Sheikh, the *ghareewan*, (witness No. 16 on the calendar,) confirms the evidence of George Shopcott, regarding his interference in the witness' behalf, when Muddee was beaten at Nogurreah. The prisoner No. 46 only struck Muddee, twice in the presence of this witness, but from his statement

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it would appear, that Muddee has been beaten elsewhere. He saw marks upon his arm. He saw prisoner No. 46 tie Muddee and put him on a camel before him and take him to Puranpore. This witness states that prisoner No. 46 took the two thieves to Allal in two Nizamut *meanehs*.

Hajee Nunna, (witness No. 19 on the calendar,) tailor in His Highness' service, confirms George Shopcott's testimony regarding the beating of Muddee at Nogurreah. When he could not point out the *ghareewan*, to whom he said he had given the property, the *moshruff*, who was comparing the *ghareewan's* names with a list in his hand, called out to Muddee, " You have told a lie, you rascal ! *Maro haramzada ko !*" Prisoner No. 46 began to beat him, and he kept calling out "*Duhai jonab alee ! duhai sahib ka ! ham ko nahuk marta !*" The witness seeing the beating ran away. The next morning he saw prisoner No. 46 take Muddee with his arms and legs bound, on a camel to the factory at Rugoonaathpore.* One day at Puranpore went to the tent of prisoner No. 39, where all the meahns live. There was only burra sahib there. Muddee had told him that he had given the property to the *fuqueers*. Burra sahib sent for them all and by his directions they beat Muddee. Saw on his body blows of *kumchees* and *corahs*. On the fifth day proceeded to Allal, remained there two days, and on the fourth reached Gajole. The next morning went to the meahns' tent, saw Muddee sitting there, and his father Etwaree ; and heard Muddee say to his father, " My body is burning, give me some medicine to cool it." He also called out " Meahn sahib ! give me some medicine to cool my body. Khan sahib ! give me some medicine to cool my body." The doctor and the *bhutjee* came and gave the father some medicine for the son, saying it would cool him. About 4 p. m. heard that Muddee was dead. The witness saw Hingoo with Muddee in a *tat kipal* near the tent of No. 39. Saw Hingoo on the road going to Gajole in a *meaneh*: Muddee was on a *ruth* at the time. Both belonged to the Nizamut. Points out No. 48 as present in the meahns' tent, when the *fuqueers* beat Muddee. Saw on the bodies of Hingoo and Muddee marks of the *corah* and *beyt*.

Ameer Aliee, (witness No. 21 on the calendar,) employed as a *mojraie* in His Highness' service. One day at noon, at Puranpore, saw prisoners Nos. 47, 48, 49 and burra sahib beat Hingoo and Muddec—some with their hands. They took them in this way to the river, and then brought them back and took them to the meahns. What occurred there he does not know.

* Rugoonaathpore is the same as Puranpore.

Mahomed Ameen, (witness No. 22 on the calendar,) an eunuch in the service of His Highness, states that one day at Puranpore he went out shooting with His Highness and returned with him. A man came and gave information that the box of prisoner No. 41 was lost. On hearing this His Highness went to his tent, and prisoner No. 37 to his. Witness heard the thieves were caught and went to see them in the meahns' tent. He saw Hingoo tied and another—whose name he does not know, but his father's name is Etwaree—sitting near him. Burra sahib and prisoner No. 47 were beating them with a stick or *beyt*—can't say which—and threatening them. Hingoo was saying, "You are beating me unjustly; let me go." Witness went and told prisoner No. 37. He sent Amamut, *hurkaru* to the aruz-begree, (prisoner No. 39,) to enquire who was beating them, and to let them go. Witness saw nothing more that day. He remained in the tent of prisoner No. 37. The next morning early some one came, Ramjeebun or some one, and said they were still beating the thieves and had not let them go. Prisoner No. 37 sent Rumzan Assa-burdar and desired him to go and see the thieves were still there, and if so, to let them go. This witness, in reply to a question by the court, stated that he went to the *meahns'* tent to see the thieves; he saw there prisoners Nos. 39 and 48, and that some of the meahns were inside and some outside the tent. He could only remember the prisoners Nos. 39 and 48. He did not go inside the tent. He saw the thieves in the verandah of the *meahns'* tent. Hingoo's hands were tied to one of the tent-pins. He did not mention to prisoner No. 37, that prisoner No. 39 was in the tent, when he saw the beating. Prisoner No. 37 knew that he was there. Rumzan went to the *meahns'* tent, but witness does not know what information he gave on his return to prisoner No. 37. He does not know if the thieves were released according to his orders. They died seven or eight days after at Gajole. Witness gets rupees 116 per mensem from His Highness for different offices. On being questioned by the counsel for the prosecutor, he stated that the camp went from Puranpore to Allal and from Allal to Gajole. There were three tents in the camp—one belonging to His Highness, one to prisoner No. 37, and one to the *meahns*. Witness lived in the tent of prisoner No. 37. In the *meahns'* tent, there were the prisoners Nos. 39, 41, 38, 47, 40, 44, 45, 43 and 42 and burra sahib and servants. His Highness' tent was always pitched in the centre, that of the prisoner No. 37 on one side and that of the *meahns* on the other. There was a *konath* between His Highness' and the *meahns'* tent. The distance between the two tents about a hundred *haths*: the distance between His Highness' and the tent of prisoner No. 37 about eighty

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or ninety *haths*. The two men died in the *pal* near the meahns' tent. Witness saw the *pal*. It was two or four *hath* from the meahns' tent. The pals were in charge of the darogah of the *furash-khana*. Witness is the darogah of the *furash-khana*. No one came to him for the *pal* for the two thieves. Etwaree used to live in that *pal* and the two men were brought thero and died there. Etwaree Khowas and other *khowas* occupied the *pal*. Generally, the *pal* these men occupied, was placed two or more *haths* from the meahns' tent, more or less, according to the nature of the ground. The *pal* was standing near whcn he first saw the men beaten. On being cross-examined by Mr. Montriu, the witness stated that prisoner No. 39 used always to dine with His Highness, and prisoner No. 47 occasionally. Excepting prisoner No. 47 and prisoner No. 45, whose hand was broken, all the meahns dined every evening with His Highness.

Kangalee Sheikh, *bheestee*, in the service of His Highness, (witness No. 27 on the calendar,) at Puranpore, one day saw one of the thieves (does not know his name) brought there on a camel. Went from Puranpore to Allal and from Allal to Gajole, where the thief died. The *hurkara* told him to bring some water and come along with him. Went and washed the body of the thief before it was buried. Describes the injuries upon it. The skin was off all over from the back and different parts. The wounds appeared to have been caused by beating. It was about 3 p. m. He was buried in a bamboo jungle, near a tank. He was buried immedately after the washing. The grave was dug before witness came there. He was called by the *hurkara* about 3 p. m.

Sheikh Shckurdee (witness No. 28 on the calendar) went with His Highness' camp from Puranpore to Allal and from Allal to Gajole. After Hingoo's death, *hurkara* called witness, and he went with water to where the body was, near a grave. Saw marks of beating all over the body, arms, back, &c.: long marks. Did not notice whether there were injuries about the feet. Did not observe whether there were marks of burning. Washed the body and came away. The grave was ready when he arrived there. Did not know Hingoo before. Heard people say it was Hingoo. Does not know the *hurkara*'s name. He was a servant of the Nizamut: witness is also. Knew the *hurkara* was a Nizamut servant by his stick and *chuprass*. Did not know him before. Points out the grave as being two or three *russees* distant from the tents. On being questioned by Mr. Montriu, he stated that Kangalee went with him, and they both washed the body.

Bhugabun Ghosc (witness No. 29 on the calendar) applied ointment upon the arms and feet of the two thieves

at Allal. Prisoner No. 48 told him it was ordered by prisoner No. 41 and prisoner No. 39. They were under a *tat pal* near the tent of prisoner No. 41. There were long scars upon the feet and hands and arms. The back was swollen, but he did not see marks. Saw marks of beating and suspects there were marks of burning. Marks of beating are long and of burning round. Saw round marks upon the shoulders. The wounds did not heal from the applications. The men died. The applications or poultices were made of *attah* (meal,) milk and ghee. Gave them for five days at Allal. The thieves were in a *tat pal* near the meahns' tent. Prisoner No. 48 first called him. Prisoner No. 41 gave him orders to put the poultices on. Used to apply them every morning at 6 A. M. Witness arrived at Gajole after the camp at 9 at night. Heard next morning the thieves were dead. On a question being put by Mr. Montriou, the witness stated, that he thinks the men must have died from beating, though he did not mention this before the magistrate. He judges from the wounds, that they died from beating. Heard that they had been beaten because a box had been stolen, but judges they died from beating from the wounds he saw. The wounds, when he last saw the men, were better, but the men died.

Kasseenath Roy and Ahaloolla, two witnesses, proved the confession of prisoner No. 49, taken before the magistrate. This closed the case for the prosecution.

Mr. Clarke put in a written defence for his clients, prisoners Nos. 37, 38, 40, 43, and 44, and Mr. Montriou the same for his clients, prisoners Nos. 39, 41, 42, 45 and 47. Prisoners Nos. 46, 48, and 49 defended themselves.

Out of thirty-eight witnesses for the defence, named by the prisoners in the magistrate's court, Mr. Montriou only called four, and the prisoner No. 46 called three. Fresh witnesses to character only were called by both the counsel in behalf of their respective clients, and their testimony, though not exculpating with reference to the facts proved in evidence, was very favorable to them.

The following are the witnesses called in behalf of the prisoners Nos. 42 and 46 :—

Kuboolan (witness No. 92 on the calendar,) a *malee* in the nawab begum's service, went with prisoner No. 42 to the camp, on an errand from the begum. At Puranpore lived under any tree they could find. Left the camp at Puranpore. Were at Puranpore a night and a day. Arrived the same day His Highness arrived there.

Hossein Bux (witness No. 91 in the calendar,) in the nawab begum's service, went with prisoner No. 42 and Hurroo and

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Kuboolan to His Highness' camp. They left it at Puranpore. Prisoner No. 42 used to remain sometimes with witness, sometimes with His Highness; remained with him under a tree; at Hyathpore prisoner No. 42 lived two days in His Highness' tent.

Mehengoo Sheikh (witness No. 98 on the calendar,) camel driver in the service of His Highness, was with the prisoner No. 46 in the journey. Was with him when he went from Puranpore to Nogurreah and when he returned. Did not beat any one before him or quarrel with any one.

Cross-examined by Mr. Trevor.—Went from Nogurreah to Puranpore with prisoner No. 46 on a camel. There were four persons. Bakur and himself went on one camel and prisoner No. 46, with some body else—does not know who—on another camel. Does not know whether he was in the service of the Nizamut or not. Went to bring *asbab* by the order of prisoner No. 37. The prisoner No. 46 made the man who was with him over to Jebun Lal. Never asked prisoner who the man was, or any thing about him. Nogurreah is five *coss* from Puranpore. The man returned with them—never asked about him.

By the Court.—The prisoner No. 37 sent the camels for the *asbab*.

Examined by Prisoner No. 46.—Mokoo Shooturban (witness No. 99 on the calendar.)—The prisoner No. 46 went with the camp. Was with him when he went from Puranpore to Nogurreah, and when he returned. Made no disturbance on the way. Afterwards went to Rajmahal. For five years never saw him quarrel with any body.

Cross-examined by Mr. Trevor.—Witness went on foot to Nogurreah. There were two camels and four persons on them. On one prisoner No. 46 and the man who had been caught, does not know his name, and on the other Mehengoo and Bakur. The man who was caught was given over to Jeebun Lal Baboo, &c.

By the Court.—A box had been stolen and he was therefore taken at night to Nogurreah to point out the property. He was taken by the order of prisoner No. 37. On his return he was taken to the meahns' tent. The witness states he saw nobody beat the man at Nogurreah and saw no marks of beating.

Cross-examined by Mr. Clarke.—They were all close to the tent with the camels. Heard prisoner No. 37 give orders to take Muddee, and the order for the camels. Witness stood by the meahns' tent, and the prisoner No. 46 and the other driver went to the tent of prisoner No. 37. Did not hear the order. They all told him prisoner No. 37 had given the order. Does not remember who first told him, or who secondly, or who thirdly told him. All three told him.

Can swear those three told him. A *hurkara* came first and conveyed the orders. They did not believe him and went to make sure. Left Puranpore at 11 at night and about 3 a. m. reached Nogurreah. It was morning when they returned.

Examined by prisoner No. 46.—Bakur Alee (witness No. 100 on the calendar) is a camel-driver. Was with prisoner No. 46 in camp. Went with him from Puranpore to Nogurreah. Did not see him oppress any one on the way. Went from Puranpore to Rajmahal and then to Maldah. Considers prisoner a good man.

Mr. Montrou declined to put any question to the witness, on the ground that nothing said by any of the witnesses for prisoner No. 46 could affect his own clients.

Examined by the Court.—Prisoner No. 46 and a man he does not know went upon one camel. He (witness) and Mehengoo went upon another. Left Puranpore at 10 or 11 at night. Went with a letter. The letter was from burra sahib for Jeebun Lal. When they arrived at Nogurreah, they gave the letter and the man in charge of prisoner No. 46 to Jeebun Lal. Next morning they returned about 8 or 9 a. m. to Puranpore. On the way, one and a quarter *coss* from Puranpore, they met burra sahib on an elephant and gave up the man to him.

Examined by the Moulvee.—The camels left Puranpore by the orders of the prisoner No. 37. They went first to his tent, and he gave the order to take the letter and the camels to Nogurreah. He said, "Whatever burra sahib orders let that be done." On their return they had no communication with prisoner No. 37. Jeebun Lal gave no reply, but only ordered the man to be taken back. Burra sahib gave the letter and the man for them to take to Jeebun Lal.

Cross-examined by Mr. Clarke.—Three of them went to the tent of prisoner No. 37. The camels were left near the meahns' tent. Witness and Mehengoo and prisoner No. 46 went and stood at the door of the tent. Prisoner No. 37 was in the tent. His bed was near the door. Did not see any body else there. The servants may have been. It was night. They were all there together. Does not know who spoke first. The *hurkara* called them. They asked what orders he had to give. Prisoner No. 37 said that burra sahib would give the letter. Can't say if prisoner No. 37 was lying or sitting. Only heard him speak and knew he was there. The other two were Nizamut camel-drivers. Can swear they went for orders. Can't remember who spoke first. The *hurkara* ordered them to take the two camels to the tent of prisoner No. 37. They took the two camels and left them at the meahns' tent and went for orders to the tent of prisoner No. 37. They were servants. There

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was no jemadar, and they went for orders. They went to the tent of prisoner No. 37, because all orders were given by him. They did not therefore go to the meahns' tent. Yes, swears to all he has stated. Does not remember what they said to prisoner No. 37. Remembers his order. It was, "Go to the burra sahib and do what he directs!" Prisoner No. 37 did not say any thing about Muddeo. Burra sahib only pointed out the man. Did not speak about Muddee. Told them to take *this man* and the letter to Nogurreah. This witness adds that he never saw Muddee beaten and did not see George Shopecott at Nogurreah, nor any marks on Muddee.

The prisoner No. 46 declined to call any more witnesses.

Having given an abstract of the principal parts of the evidence upon the record, it will be necessary to examine some of the objections raised by the counsel for the defence, to the credibility of the testimony adduced in behalf of the prosecution.

The counsel for the prisoner No. 37 and others, considers the evidence of Dhunnoo as disentitled to credit, because he has stated that on the day on which he witnessed the beating at Puranpore, His Highness with the meahns returned from shooting about 1 p. m., and that the thieves had been arrested an hour before, whereas more creditable witnesses state that it was His Highness' custom to stay out till 4, 5 and 6 p. m., and that on *that* particular day he returned at 5 p. m., and the arrest took place about 9 A. M.

It is unfortunate for the argument of the learned counsel, that the prisoner No. 37 (his client,) when examined by Mr. Loch, the officiating magistrate, on the 16th May 1853, admitted that he returned from shooting on *that* day about 1 p. m. or 2 p. m. That it was the *same* day on which Dhunnoo witnessed the beating is clear, because the prisoner No. 37 also admitted in that examination, that on his return from shooting at that time, he heard that a small tin box belonging to the prisoner No. 41, darogah of the *pal-khana* was missing, and that two men were arrested on suspicion. That the prisoners No. 39 and 47, with their servants (prisoner No. 48 and witness No. 5) and others, beat them, and that he sent three or four times to prevent the beating, and he *distinguishes that* day from the day following, by stating further, that the *next* day they were also beaten by the prisoners Nos. 39 and 48, the prisoner No. 47, burra sahib, witness No. 5 and others being present in the tent, and that he again prevented the beating, and when asked what persons were acquainted with these circumstances, he mentions the names of Meahn Ameen and prisoners Nos. 38, 41, 44, 42, 45 and 47 as being present.

The return of the shooting party in the middle of the day is also admitted by the prisoner No. 39, in his examination before the magistrate on the same date, the 16th May 1853, and by the prisoner No. 46 in his defence, and the prisoner No. 49 in his confession.

The counsel for the prisoners No. 41 and others, in his written defence, states that the admissions of the prisoner before the magistrate are not admissible as evidence in the sessions court.

The magistrate took the examinations of the prisoners and put the same into writing, and they formed part of the judicial enquiry. Such examinations, when reduced into writing and attested by the prisoners, and signed by the magistrate and placed upon the record, are admissible as evidence, *that is*, such weight will be given to them as the court may consider them entitled to, with reference to the other parts of the examinations, the circumstances of the case and the evidence generally. This has been the practice of the court, and the court is not aware that such practice is opposed to the principles of English law or inconsistent with the requirements of justice.

A written examination, taken in conformity with the regulations, which are the magistrate's guide, is the best possible evidence of the prisoner having made a declaration of all that is contained in that examination. If the objection should be, that a part of it has been elicited by questions put by the magistrate, the objection would not hold good, so long as the magistrate does not put the questions in such a way as to extract a confession, but for the purpose of elucidating or explaining what the prisoner may be willing to state with reference to the charge. It only would hold good, where the prisoner, by such questions, might be entrapped into making statements that would be used against him on his trial, which, but for those questions, he would not have made. It surely was incumbent on the learned counsel to prove in behalf of his clients, that there was some omission or irregularity in the taking of the examination, in order to prevent its being used against them, instead of simply asserting that such evidence was inadmissible.

The witness Dhunnoo does not state that the thieves were arrested *an hour before* the return of the party from shooting, but that it was one hour before their return, when he first saw them bound and beaten. He did not (he states in the beginning of his deposition) hear of the theft *till 12 at noon.*

The discrepancy, which the counsel for the prisoner No. 37 has pointed out, between what the witness stated at the

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sessions court and before the magistrate, regarding the threat used by prisoner No. 37 to the two thieves, is capable of being explained. It would seem from his answer, when questioned that his statement before the magistrate was true, only, that the words, "If you don't give up the property," were omitted, meaning, that the prisoner No. 37 asked for the order and gave it.

The evidence of *Hingun Khan* is not, in the opinion of the court, entitled to much credit. There are discrepancies that cannot be satisfactorily reconciled.

With reference to the evidence of *Jhungoo Khan, battah-burdar*, the points which the counsel for the prisoner No. 41 has laid stress on, as rendering his evidence totally inadmissible because he considers it inconsistent with all other testimony to the same circumstance, viz., that part of his evidence in the sessions court, in which he states that Muddee was brought back from Nogurreah on an elephant and not on a camel, and that part of his evidence before the magistrate, in which he states that burra sahib and prisoner No. 47 were seated on the same elephant, are points which, being incidentally confirmed by the defence of the prisoner No. 46 and other evidence on the record, would dispose the court to give that evidence greater credit.

With regard to the objections urged by the counsel for the prisoner No. 37, to the statement of Hosseinee Sheikh (No. 5.) there is no doubt that he was personally interested, but the personal interest he must have felt in the proceedings and the result of the trial can form no legal ground for the rejection of any part of his testimony, that can be borne out by other evidence. He was put upon his defence at first by the magistrate; and after his examination was taken, he was made Queen's evidence. He distinctly states that burra sahib and prisoner No. 47 arrested Muddee, because he had once come to the meahns' tent and they suspected him of the theft. He states that his master (prisoner No. 41) was present, and though he did not beat, he threatened. This is not an entire exculpation of his master. There is no contradiction of his evidence by Dhunnoo to render it unworthy of credit. All he has stated relative to the beating, and what he stated regarding the brandy, may appear inconsistent with the evidence of the other witnesses, because they have not stated the same, but their not having stated what he states, is no proof that he may not have seen what he relates. There is a difference in the statements of the witnesses, regarding the conveyances in which Muddee and Hingoo were taken from one place to another, but it may be accounted for by the presumption that they saw them at

different times, since it is shown that they were carried first from Puranpore to Allal, and then one of them from Allal to Puranpore and back again, and then both of them from Allal to Gajole, and also by the length of time that has elapsed since these occurrences. Hosseinee Sheikh deposes that they were taken sometimes in one conveyance and sometimes in another.

Rahim Alee Khan (witness No. 9) has spoken of the theft as happening at 6½ A. M. This was upon cross-examination by Mr. Clarke. He appears to have associated it with the fact that His Highness and his party had gone out shooting, when he heard of the theft, and it is possible from this association in his mind, that he may have miscalculated the time. The other discrepancies are not sufficient to affect the credibility of his general testimony.

Both the learned counsel for the defence consider George Shopeott's evidence as entitled to the fullest credit. His evidence convicts *only* the prisoner No. 47 (the camel-driver,) who mal-treated Muddee at Nogurreah.

The same meed of praise for truthfulness of testimony is liberally given by both the counsel to Mahomed Ameen (witness No. 22.) His evidence convicts the prisoner No. 47 and burra sahib of beating Muddee and Hingoo at the meahns' tent, and prisoners Nos. 39 and 48 of being present. He states that some of the meahns were inside the tent and some out.

These two witnesses have, the court has no doubt, spoken the truth in *as far as* they have deposed, but their silence regarding transactions to which other witnesses have sworn is no proof that those transactions did not take place.

The prisoner No. 49 confessed before the magistrate and it has been proved by the attesting witnesses, that the confession was voluntary and that no undue influence was exercised over the prisoner.

The confession is to the following effect:—"I did not murder Hingoo and Muddee. Last Phagoon I rode an elephant and went with His Highness on his expedition. I am in his service. On arriving at Puranpore, I heard one day that a theft had taken place in the tent of prisoner No. 41 and that the thieves were arrested and were being beaten. On hearing this, I went to the tent to see the thieves, and saw burra sahib, prisoner No. 47, Hosseinee (witness No. 5) and Joomun beating Hingoo and Muddee in the tent of the prisoner No. 41. Some were beating with a ratan and some with a *corah*, and the two thieves were crying and calling out for His Highness' and the Company's help (*Duhai navab sahib ! duhai company !*) Seeing this I returned to my elephant.

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On that day His Highness came back from his hunting excursion at noon, and in the absence of the *peadahs*, I went and placed a ladder against the elephant, by which His Highness descended and went to his tent. Prisoner No. 37 and the other meahns, whose names I do not know, but can point them out if I saw them, asked where the thieves were, and Hosseinee Khowas said they were in the tent. Then all the meahns, including prisoner No. 37, went to the tent and began to beat the two thieves, and they tried to run away in consequence of the torture, but prisoner No. 47 and burra sahib abusing me called out to me to go and catch them, and I caught them. They ordered me afterwards to tie them, but I refused, as I have children (*bal butcha*), on which they threatened to beat me, if I did not tie them up. I was therefore obliged from fear to tie both Hingoo's hands with a tent-rope, and then ran away. What happened afterwards, I do not know. I went with the advance tents and do not know if they were subsequently beaten. On reaching Gajole, I heard the two thieves were dead. I saw the corpse of Muddee when he was buried, but not that of Hingoo. There were wounds upon Muddee's body, in some places the skin was torn off and in some there were bruises. Some said they died of beating, some of cholera. The doctor knows. I only saw them on the day they were beaten and the day they died."

This confession of course is only evidence against the prisoner himself and not against the other prisoners. The whole of this confession must be considered, although all the parts of it may not be entitled to equal credit. The same rule applies to this confession as to the admission in the examination of the prisoner No. 37, to which the court has adverted. The whole must be considered, and if there is any part in favor of the prisoner, which is not disproved by the evidence for the prosecution, and is not improbable in itself, it should be weighed and judged by all the circumstances of the case. The reason of such a course, both as a maxim in law and as a practice in court, is obvious, because it is most probable that what a prisoner admits may be true, as he could have no motive to criminate himself, but it is still left to the court to weigh the *whole* with all the circumstances of the case, as they appear in evidence, in order to see *how much* of the whole is worthy of belief, including such facts as the prisoner may admit in his own favor, as well as those which make against him.

The law officer, after a very prolonged and patient trial, during which the prisoners at the bar have had the benefit, most of them, of the services of able counsel from Calcutta to

conduct their defence, has given his *fatawa*, which convicts by *tazeer* prisoners Nos. 38, 39, 42, 43, 44, 47, 48, 49 and 46 of aggravated culpable homicide, as principals; prisoners Nos. 41, 40 and 45, of privity, No. 41 being besides the owner of the stolen property, and on violent presumption, the instigator of the above crimes; and Aman Alee Khan (No. 37) of instigating and giving orders and beating on violent presumption, and of privity to the above crimes on full proof.

I have maturely weighed the whole of the evidence for and against the prisoners, taking into consideration such discrepancies as in my mind affected the credibility of any part of the evidence, and adopting only, as the grounds for my judgment, such parts as I considered trustworthy and on which safe reliance could be placed.

I will briefly touch upon one or two points, as they have presented themselves successively to my consideration:—

First.—Whether the two men, Hingoo and Muddee, actually died about the time they are said to have died, in His Highness' camp?

On this point there can be no doubt upon the evidence.

Secondly.—Whether they died a natural death or by accident, or whether it was the result of an unlawful act deliberately committed by others?

It was given out in the camp, that these men had died of cholera, but there is not the shadow of proof to support the rumour. On the contrary, there is sufficient evidence to show that they had, previous to their death, been repeatedly, and as one of the witnesses expressed himself, unmercifully beaten. It was a continuous beating, a protracted cruel torture, at different times and in different places, making it difficult, after so long a lapse of time, for the witnesses to the cruel acts to depose with minute exactness to *all* the circumstances attending each separate transaction. I lay aside all *general* presumptions in a case of so serious a nature. From the evidence, however, a violent presumption arises, that when the beating had told upon these poor wretches, when their skin had been taken off them as one witness said, and their flesh was raw as another described it—*raw like raw beef*, and sores covered their bodies—that then, and not till then, the cruel torturing ceased, and native doctors were sent for to give their aid in the last extremity. A veil has been thrown over the last scenes of the painful tragedy, but enough of evidence has been produced, amounting to legal presumption, *to unite cause and effect*, and in the absence of any proof whatever to the contrary, to show that the men died from the mal-treatment

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they received, and that their bodies were buried not far from His Highness' camp at Gajole.*

The next point to consider is, whether these unlawful acts, this continuous and cruel mal-treatment, terminating so fatally, constitute the crime of murder or culpable homicide, or any other crime of less degree.

The English law has laid down generally a clear distinction between the crime of murder and that of man-slaughter.

Any unlawful act, which deprives another of life, in the commission of which there is no *malice* expressed or implied, is man-slaughter. But what is this malice and in what manner is it to be ascertained? Blackstone, with his usual clearness and penetration, attempts to define it. He states that the malice necessary to constitute the crime of murder is *not confined* to an *intention* to take away the life of another, but that an *intent* to do an *unlawful* act, which may *probably* end in depriving another of life, is *included* in it, that the *malice prepense* essential to murder is not so properly malevolence to the individual, as an evil design generally, arising from a bad heart, which may be expressed or implied.

So that if a man, not having in his heart a positive purpose to take life, should entertain a purpose to do another some very grievous bodily injury and carry out that purpose, and in the prosecution of it death ensue, although the death may ensue beside the original intention, the act would be murder.

There might therefore be, in the painful case before the court, some grounds on the general principles of the law, which would rule such cases for considering the crime one of murder; but after giving this point the deepest attention, I am constrained, with reference to all the facts of the case as elicited by the evidence, to regard it as culpable homicide under very aggravated circumstances. I am borne out in this view by the case of Kasee Mahomed *versus* Byjnath and others, decided by the Court of Nizamut Adawlut on the 29th March 1825, a case of excessive cruel and savage torture, for the purpose of compelling a confession of theft and production of property, which ended in the death of the

* The learned counsel for the prisoner No. 41 has referred to the rule of that great and merciful Judge, Sir M. Hale, against the conviction of murder, where the body, as the best proof of the *corpus delicti*, is not forthcoming. This rule is of imperative force in cases where the evidence is circumstantial, and there is the slightest doubt of the death of the party. In this case the evidence is principally that of eye-witnesses, and the death of the parties has never been denied by the prisoners. The evidence of the crime was gradually collected long after its perpetration and the bones of the poor men, if they could have been produced and could have been recognized, would not have strengthened the violent presumption of the cause of death.

person abused. The law officer of the circuit court acquitted the prisoners, while the judge convicted them of *wilful murder*. The judges of the Court of Nizamut Adawlut, C. Smith, H. Shakespeare and W. B. Martin, convicted the prisoners of culpable homicide with aggravating circumstances.

Mr. Clarke observes that every concomitant by which murders are characterised has been reversed in this case. That suddenness, solitude and secrecy are the distinguishing marks of the worst murders, but this was the most prolonged, the most public and the easiest of detection, and Mr. Montiou takes the same view, and from the *openness* of the acts, doubts the possibility of their commission.

The publicity of the acts, that is, of such acts as were committed *outside* of the meahns' tent, is no ground for discrediting the joint testimony of so many witnesses, though to some extent it may be ground for believing, that those who committed them did not, in the commission of them, *intend* to take life, but to go to the extremest length *short* of taking it. The *publicity* may be attributed to the *presumption* under which the prisoners appear to have acted, that as members of His Highness' household, they had, *within* his camp, the power to apprehend and punish for theft, and to the *gratification* which some of them, peculiarly circumstanced as they are, might naturally feel in openly displaying that power, and to the *hope*, that in the event of any thing untoward happening, the *egis* of the Nizamut Adawlut might be extended over them to shelter them.

The next point to consider is, whether the parties charged, and which of them, were guilty of this crime, and whether as principals or as accessories or privy to it. The motive of the crime is clear. It was the discovery of the stolen property, and the men were mal-treated to the death, on the suspicion that they were the thieves, and with the view of making them confess where the property was concealed. The *exact* time when each separate act was committed is not so important in a case like this where the crime has *continuance*, nor is it so necessary where so many were concerned at different times, to specify distinctly the exact share which each took in each different transaction, or to particularise distinctly the exact instrument which was used by each in the beating or the torture. It is not necessary to prove by whom the *fatal* blow was given: all who were present aiding and abetting the acts would be principals. All who were present and assisting at the beating would be guilty of the death of the parties, though they themselves did not beat, provided death ensued from the beating.

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I disagree with the *futwa* in the conviction of the prisoners on the different counts. I would, in advertence to the above remarks, convict the prisoners Nos. 39, 46, 47, 48 and 49 as principals in the culpable homicide of Muddee and Hingoo, attended with very aggravated circumstances, and with reference to the precedent of Byjnath and others already alluded to, in which the principal was sentenced to fourteen years' imprisonment and the accomplices to ten years' imprisonment and less, according to the different degrees of criminality, I would recommend them to be sentenced to fourteen (14) years' imprisonment with hard labor in irons in banishment, and the prisoners Nos. 40, 42, 43, 44, as aiding and abetting in the aforesaid crime, to ten (10) years' imprisonment with labor in irons, and the prisoners Nos. 41 and 45 on the same count, but as less culpable and with reference to their previous good and inoffensive character, to six (6) years' imprisonment with labor without irons, and prisoner No. 38, against whom *only* one witness (Hossaninee) deposes as to *beating*, another (Jinghoo Khan) deposing only to his *following* the party who took the deceased to the factory, as privy to the crime, to three (3) years' imprisonment with labor, commutable to a fine of rupees 100.

With regard to the remaining prisoner (No. 37,) I must say, after carefully weighing the whole of the evidence against him, I am not satisfied with that part of it which would implicate him as the instigator, which he would be, if it was satisfactorily proved that he gave orders for the two men to be beaten. A court must give no weight to suspicious in so grave a crime: even light presumptions would be insufficient. It is true that a number of presumptions may, by their accumulation, become important, and it has been held a good maxim in weighing evidence, "*possunt diversa genera ita conjungi ut qua singula non nocent, ea universa tanquam grande rerum opprimant.*" There is a presumption that the witnesses spoke the truth in what they stated regarding the orders the prisoner No. 37 gave, when Muddee at night was taken on a camel by the prisoner No. 46, with a letter from the burra sahib to Nogurreah. Such evidence does not prove that the injuries which Muddee received at Nogurreah were inflicted by the orders of the prisoner No. 37. His own directions may have extended only to the conveying of Muddee under surveillance to Nogurreah for the purpose of discovering the property which he was accused of having stolen. Taken in conjunction with other facts in evidence, the suspicion may go further, but it does not amount to legal presumption. The statements of the witnesses, relative to the orders they heard him give for the beating of the

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two men after the return of the party from hunting, from the manner in which they are given, are not sufficient for conviction. Whatever amount of suspicion attaches to the fact, it does not, upon the evidence, to my mind, amount to legal proof. The counsel for the prisoner No. 37 has called the attention of the court to the number of enemies who are likely to have plotted against his client. This was stated by one of the witnesses for the defence and would be a natural consequence of the high position he occupied in His Highness' household, and is good ground for inducing the court to weigh the whole of the evidence with great care and caution, and on whatever point it does not amount to legal proof, to give his client the benefit of a doubt. The accumulative presumptions arising from the whole of the evidence afford *full legal proof* of his being an accessory after the fact, both in harbouring the principals and in concealing the crime, and I would recommend him to be sentenced to seven (7) years' imprisonment with labor.

The court has departed from the usual practice and rule of procedure in taking the evidence of witnesses, according to their *number* upon the calendar. This was permitted at the particular request of Mr. Trevor and with the assent of the counsel for the defence. They were examined *as they were called*, for the prosecution, the number against their names being retained. Out of sixty-eight witnesses, Mr. Trevor very judiciously selected only twenty-four for examination, of which number four were afterwards rejected by him as unworthy of credit and one was directed by the court to be committed for perjury.

The trial has occupied a long time, and the cross-examinations of some of the witnesses may appear to be unnecessarily extended. It was the object of the court not only to throw no possible obstacle in the course that was pursued for the defence of the prisoners, but to allow that course the utmost latitude, feeling confident that the ends of justice would be better secured by such a procedure; and having this object in view, it permitted a longer cross-examination of some of the witnesses than may have been necessary, and refrained from interrupting questions that may have been irrelevant or not pertinent to the issue.

Less reliance is not to be placed on the evidence of the witnesses who have been examined on this trial for the prosecution, because their depositions were taken by the magistrate so long after the occurrence of the transactions to which they deposed. It could not have happened otherwise. They were witnesses who were with the camp of the nawab. It was not till His Highness had returned from his expedition that rumour

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became prevalent and their testimony available. There were some witnesses, whom the magistrate might have examined and from whom certain facts might have been elicited, to connect more closely the chain of proof, secured as witnesses for the defence, and of whose evidence the court was consequently deprived. There is moreover little doubt, that had the magistrate, with the permission of the Government, proceeded to the spots where these tortures were inflicted, additional evidence might have been obtained besides that of the followers of the camp and of the servants of His Highness' household, but notwithstanding this, credit is due to that officer for the manner in which he prosecuted the enquiry.

Mr. Trevor, in his reply, has made a few remarks on the non-appearance of Etwaree, the father of Muddee, as prosecutor on the trial. The court observes, that when examined by the darogah, he declared that his son had died of cholera. His bare assertion, against the accumulative evidence of the torture and injuries inflicted on his son, is a prominent and dark feature almost incredible in this revolting case. It appears in evidence, that he is a *gholam*, or slave, in the service of His Highness, and that his son was a *chela*, that is, had he lived, he would have become, at his father's death, a *gholam* in his place.

At the close of the case for the prosecution, the court intimated to the counsel for the defence the usual practice, of taking in writing separately the defence of each prisoner, when both the counsel for the defence replied that such a course was not necessary for their clients, but that they would, with the permission of the court, put in, on their behalf, a written defence in English, accompanied with translations, for the benefit of the law officer, to which arrangement the court assented.

This report is much longer than I had originally intended it should be, but while writing it, I thought it better, as the case was one of great importance and interest, to give the greater part of the evidence in full, and to take up and express the opinion of the court on the different points, which presented themselves as deserving of remark, as well as those on which the learned counsel for the defence thought fit to lay particular stress.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and H. T. Raikes.)—This case is referred for the orders of the Court on two grounds, *first*, because the sessions judge disagrees with the *futwa* of the law officer in regard to the degree of criminality of some of the prisoners, and *secondly*, because he is of opinion that the principal prisoners are

deserving of a higher punishment than it is within his competence to award.

It would appear that the nawab nazim of Bengal, attended by a large retinue, went, towards the end of March last, on a shooting expedition in the Maldah district, and that on the morning of the 31st March, while he was at sporting, a box containing money and some valuables was missed from the tent of the meahns, which at the time was occupied by the prisoners Nos. 38, 39, 40, 41, 43, 44, 45 and 47. The box belonged to the prisoner No. 41 and was in charge of the approver Hosseinee. It would further appear, that a lad by name Muddee was arrested on some vague suspicion; that he was severely beaten asa means to induce him to deliver up the stolen property; that he incriminated Hingoo, who was subjected to similar ill usage; that this treatment was continued for several days in succession, and that it caused the death of Muddee on the 5th and that of Hingoo on the 6th of April.

The above is a brief outline of the facts of the case, which are established by the general evidence, and are admitted by the counsel who represented the prisoners Nos. 37, 38 and 40 before the court.

The sessions judge has convicted the prisoners Nos. 39, 46, 47, 48 and 49 as principals, Nos. 40, 41, 42, 43, 44 and 45 as aiders and abettors, No. 33 as privy to the crime, and No. 37 as accessory after the fact.

As the crime was for some time concealed from the authorities, no inquest was held and no medical evidence is forthcoming as to the state of the bodies after death, but the evidence of Mr. Shopcott, the two *bheestees* who washed the bodies, and the apprentice who applied remedies before death, as to their condition a short time before, and immediately after death, fully justifies the Court in the belief, on violent presumption, that the deaths of the deceased were the consequence of the cruel mal-treatment they had received. The question for the determination of the Court therefore is, whether the accused parties before the Court took any, and what part, in this ill-treatment, or are in any way connected with the crimes charged against them.

Mr. Clarke and Mr. Waller for the prisoners have strongly pointed the consideration of the Court to the worthlessness of the evidence in general, urging that the charge against their clients originated in a foul conspiracy got up by plotters in the palace to criminate and ruin the prisoner No. 37, who is the favorite of the nawab nazim and the head man of his household.

The notoriety of the events which form the grounds of this case must have made them known to so many who were

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present with the nawab's camp, that we are not surprised to find that a large number of witnesses was, in the first instance, brought forward to tender evidence against any accused party, but of these the Government prosecutor selected twenty and in consequence of contradictions and discrepancies in the depositions of five of these witnesses before the sessions court, he rejected their testimony as unworthy of credit. The testimony of the remaining witnesses, on which the leading points of the case must rest and on which the sessions judge has based his verdict against the prisoners, has, under the above circumstances, been narrowly scrutinized as regards its truth, and carefully weighed, with reference to its respectability, its general consistency, and the probabilities suggested to our minds in considering all the circumstances of the case.

Before coming into Court, we had attentively considered the evidence, the written defences put in by counsel at the sessions court, and the remarks of the sessions judge, in refutation of the objections raised therein to the credibility of the testimony of each witness, and had come to the conclusion, that the statements of Hosseinee Sheikh (the approver,) Dhunoo Khan, Rahim Sheikh and Hingun were open to grave suspicion. This suspicion the arguments of the counsel for the prosecution have failed to diminish.

The counsel for the defence have strongly animadverted upon the testimony of the above-named witnesses in particular; they have directed attention to their want of respectability, the circumstances under which they came forward to give their evidence, the general improbabilities and contradictions involved in their statements, and the difficulty of believing that they were ever allowed to be spectators of the events they describe.

The Court will first remark on the evidence of the approver Hosseinee. This man was first arrested as implicated in the statement of his master Arjoonund (prisoner No. 41.) His defence was taken down by the magistrate, and as that defence exculpated himself from all participation in the crime, and directly inculpated the other prisoners, the magistrate at once released him and made him a witness in the case, proceeding at the same time to record his testimony on the part of the prosecution. He is thus called an *approver*, and his statement is relied upon as carrying with it all the weight, attached to evidence of this character when properly supported. This man had special charge of the missing property and is the person therefore on whom blame, if not suspicion, would naturally fall. He was interested in the discovery of the thief, or in removing the suspicions of his master from himself, and nothing can be more probable than

that he both knew, and participated in, the ill-treatment of the deceased. In fact two credible witnesses depose that he was aiding and abetting those who inflicted the torture on the thieves, yet he refrains from disclosing any such participation, and in no way implicates himself. To have rendered his evidence effective, the magistrate should have, in conformity with the provisions of Regulation X. of 1824, tendered to him a conditional pardon ; this was not done ; he was therefore placed under no special obligation to disclose the whole truth as in the case of an admitted approver, and taking his evidence as that of an ordinary witness, it appears to us to have been dictated by a wish to exculpate himself at the expense of his fellow-criminals, and to team with improbabilities and gross contradictions, which compel the Court to set it aside altogether.

As respects the witnesses Dhunnoo, Hingun Khan and Sheikh Rahim Alee, we observe that the first is a discarded *bukundauze* of police, who was the first person who came forward and volunteered evidence, as he himself states, in the hope of earning a good name and procuring employment ; the second is a lame mendicant, who was indicated by Dhunnoo as able to give information in this case ; and the third describes himself as a cook temporarily employed in the nawab's service during this hunting excursion.

It is impossible to ascertain whether these persons were really present at the nawab's camp as represented. The way in which they account for their presence there, does not impress the Court with any reliance on that point, and the occurrences which they relate as taking place daily from the commencement, to the close, of this affair, must have taken hold on their memories in an unusual manner, to enable them, after so long an interval, to depose to particulars, of which they then conceived themselves to be mere casual observers. The Court observes that Hingun Khan made such palpable contradictions before the sessions, that the judge has recorded his opinion that the discrepancies are irreconcileable and the evidence is not entitled to much credit. We also remark that these witnesses are the only persons who depose to the prisoner No. 37, having instigated and participated in the outrage ; one depoosing that he threatened to blow the thieves from a gun and countermanded the nawab's order for their release, while another alleges that No. 37 trimmed a bamboo and chastised the thief with it. Statements, apparently so exaggerated, could hardly be relied upon, unless made by persons of undoubted veracity, and in the present instance totally fail to convince us of their truth, being in direct opposition to the testimony of far more credible persons. Moreover,

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we observe, that the sessions judge himself discredited such part of the evidence of these witnesses affecting the above prisoner as instigating the assault. Under these circumstances, we cannot but regard the general character of the evidence of these witnesses as doubtful and suspicious, and we feel therefore constrained to discard it *in toto*.

The remaining witnesses, noted in the margin, seem to the

Jinghoo Khan, George Shopcott,
Doolaul Hurkara, Ghasoo Chob-
dar, Junglee Sheikh, Hajee Munna,
Ameer Alec, Mahomed Ameen,
Kangalee Sheikh, Sheikh Shekurdee,
and Bhugoban Ghose.

Court to have given a connected and probable account of what took place within their own observation and knowledge. They are all servants of the nawab and their occupation accounts for their presence on the spot. Mr. Shopcott's evidence is in no way impeached, and that of Ameer Alee and Mahomed Ameen has been scarcely called in question, and the Court, after duly considering the exceptions taken to the remaining witnesses by Mr. Montrou, in his elaborate review of their depositions, are of opinion that the contradictions elicited on cross-examination are on points so immaterial, as in no way to shake the confidence of the Court in their general credibility and trust-worthiness. Applying therefore this proof to the case of the prisoners, we find there is nothing in it to bring home to the prisoners Nos. 37, 38, 40, 41, 44 and 45 any of the charges on which they stand committed, and only one witness speaks to the presence of No. 42 and another to that of No. 43, on the occasion of the thieves being taken to the river-side, but they even do not implicate them as taking any part in mal-treating, or encouraging the mal-treatment, of the prisoners.

It has been argued by Ramapersaud Roy, that the presumption, naturally arising from all the facts of the case, is sufficiently strong to convict the prisoner No. 37 of accessoryship after the fact to the murder and of privity to the same. The sessions judge has found the prisoner guilty of the first charge, inasmuch as he harboured the criminals and concealed the crime. On this point, we have to observe, that to justify a conviction on this charge, there must be some act proved to have been done to assist the felons personally. The evidence discloses no proof of any overt act, nor of any other act on the part of the prisoner, from which such an inference can fairly be deduced. As regards the charge of privity to the crime, we would remark that there is no direct evidence to the fact of the prisoner No. 37 taking any part, or being directly, or indirectly, concerned, either in the burying of the bodies, or in giving currency to the report of the thieves having died of cholera. The mere *possibility*, that the

rumour of the death of these men by torture had reached the ears of the prisoner No. 37, is not in itself sufficient to bring home to him the charge of concealing or procuring the concealment of the felony. To establish such a charge, there must be some proof, that though not consenting, he was personally cognizant of the crime, and though able, refrained from preventing it or neglected to use any endeavours for the apprehension of the offenders. An admission was made in the foudaree by prisoner No. 37, which is corroborated by the most respectable witness examined, to the effect that the prisoner, when he heard the thieves were subjected to ill-treatment, sent persons to forbid it on two different occasions and to release them. Thus there is evidence of an attempt to prevent the offence, and though death subsequently ensued some days afterwards, it would be, we think, an unfair construction of his acts to presume that he was necessarily aware that death was the consequence of such ill-treatment.

Much stress has been laid by Mr. Trevor, both in his written defence and in his arguments before the Court, on the evidence of the three witnesses cited by Furreed Khan (No. 46,) as inculpating the prisoner No. 37. On their cross-examination, they stated that the camels, on one of which the deceased Muddee was conveyed, bound to Nogurreah, were sent by the orders of the prisoner No. 37, and that he was therefore assenting to the ill-treatment inflicted on the deceased. These witnesses have palpably perjured themselves, as regards Furreed Khan never having beaten Muddee, as their evidence is directly contradicted by that of George Shopcott, and Mr. Trevor would wish us to reject that part of their testimony and adopt it as to Aman Alee. Evidence so tainted, must be received with extreme caution, but taken as it stands, we are of opinion that it does not even go far enough to show that the prisoner No. 37 was aware for what purpose the camels were required. One witness states that he *heard* from the three camel-drivers that they had received orders from Aman Alee Khan to take Muddee to Nogurreah, and another swears that the two camels were taken by Aman Alee's orders to Nogurreah, and that he desired the drivers to go to the burra shib for instructions. From the third witness, nothing inculpatory of the prisoner was elicited. Considering that the prisoner had no motive for ill-using the thieves, that it is in evidence he endeavoured to prevent their ill-use, we cannot, from this evidence, draw any conclusions condemnatory of this prisoner.

By the evidence of the witnesses relied on by the Court, it is satisfactorily established, that the prisoner No. 39, who lived in the meahns' tent, took a part in the ill-treatment of the

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deceased. The witness No. 11 deposed to his taking, with others, the thieves to the river-side and to his beating them going and returning. No. 12 confirms the fact, with this qualification, that he did not see the prisoner himself beat them, and No. 22 speaks to the prisoner being in the tent, and present, when the thieves were being chastised by others, and to the prisoner No. 37 sending orders to this prisoner to stop the mal-treatment.

The prisoners Nos. 46, 47, 48 and 49, together with burra sahib, who has evaded justice, are identified by the witnesses generally, as taking the most prominent part in the gross mal-treatment ending in death of the deceased persons, and Mr. Shopcott's evidence especially identifies No. 46, the camel-driver, as on one occasion beating the deceased Muddee in the most unmerciful manner for the space of fifteen minutes: there is also the clear and well-attested confessions as to prisoner No. 49 before the magistrate. We therefore, in concurrence with the sessions judge and law officer, convict the prisoners Nos. 39, 46, 47, 48 and 49, as principals in the culpable homicide of Muddee and Hingoo. The case is attended with circumstances of such aggravation and deliberate cruelty, deducible from the evidence generally, as to render the crime scarcely distinguishable from wilful murder; but adopting the principle generally inculcated by the precedents of this Court, that unless the intention of the criminal to take life is fairly inferrible from the nature and circumstances of the case, a conviction of wilful murder cannot pass. We convict them, of the minor offence of culpable homicide, and sentence them as proposed by the sessions judge, to fourteen (14) years' imprisonment with labor in irons in banishment.

The Court have noticed in its place the irregular manner in which the magistrate has admitted Hosseinee to be an approver; the Court further notices with censure the unfairness and impropriety* of the magistrate's proceeding, as

* From the Magistrate to the Sessions Judge of Moorshedabad, No. 770, dated the 20th October 1853 :—

I have the honor to acknowledge the receipt of your letter No. 263, dated 18th instant, forwarding the remarks of the sudder judges who presided at the trial of Aman Alee Khan and others, charged with the wilful murder of Hingoo Faqueer and Muddee Khowas.

I regret to observe that the judges should have found occasion to censure me for my proceedings as regards Hosseinee, the approver, and the prisoner No. 41, Meahn Arjoonund.

I have not been called upon for an explanation regarding my conduct in the case, and I may be wrong therefore in thus addressing the Court through you; but when I state that my proceedings have been guided by the general rules in force, and that I have precedents in my own office for all that I have done, I feel sure that the Court will pardon the irregu-

regards the prisoner Arjoonund in first taking his defence, then converting him into a witness and examining him on

larity, should it be considered such, and I entertain a hope that my explanation may in some measure mitigate the severity of the censure the judges presiding at the trial have deemed it necessary to pass upon me.

The Court remark with regard to Hosseinee thus—"This prisoner was first arrested as implicated in the statement of his master, Arjoonund, prisoner No. 41." I beg to state respectfully, that the statement of prisoner No. 41 was in no way made use of against any one, and that so far from its being the case, as regards Hosseinee, the Court, upon reference to the *nuthée*, will find that the approver was implicated by several witnesses before Meahn Arjoonund's defence was even taken, and that he was summoned some days before Meahn Arjoonund's statement was taken down. The Court then observe as regards Hosseinee, that "his defence was taken down by the magistrate, and as that defence exonerated himself from all participation in the crime and directly inculpated the prisoners, the magistrate at once released him and made him a witness in the case, proceeding at the same time to record his testimony on the part of the prosecution." I beg respectfully to state that the Court have misunderstood my intentions. Hosseinee admitted his having been present the whole time, but denied taking a principal part in the torture. He gave, what appeared to me to be, a full and true account of what had taken place, inasmuch as it corroborated generally all that had been deposited to by the other witnesses, and I deeming it advisable to allow him to turn approver, offered him a pardon in open court, on condition of his giving a true and detailed account of all that had happened, gave him time to think over the offer, and on his accepting it, I ordered his deposition to be taken down, and he having given an account which appeared to me to be true, I directed his release and made him a witness in the case. This was done strictly in accordance with the rules that had been in force, and which had been approved of and sanctioned by the Sudder Nizamut Adawlut, inasmuch as the Court found no fault with nor called for any explanation from the committing officer in either of the cases noted below, and which I find on perusal to be exactly similar as regards the form of *roobukaree* to the one now under consideration.

Case No. 1, Goroodyal Mundul, plaintiff, *versus* Jyendee Sheikh and seventeen others.—Dacoity.—Committed to the sessions on the 28th May 1839 by Mr. Elliott. In this case, three men, named Sobhanee, Junglee and M.nick, were admitted as approvers and a *roobukaree* similar to the one filed in the case of Government *vs.* Aman Alee Khan and others, allowing Hosseinee to turn approver and striking his name off the list of defendants, was drawn out and signed. The defendants were punished by the sessions judge and the case was appealed to the Nizamut Adawlut, who upheld the conviction.

Case No. 2, Oojull Bewa *vs.* Subbee Loll Dass and others : Charge, Burglary with wounding. In this case, a prisoner named Radhabenode Shah was made an approver by Mr. Harrison. This man merely, in his confession, acknowledged privity, and the case was sent by the sessions judge, to whom it had been committed, to the Nizamut Adawlut for their orders.

I have brought forward these cases, under the impression that the Court did not consider my *roobukaree*, directing Hosseinee's being made an approver, sufficiently explicit as to the fact of a pardon having been offered to him agreeably to Regulation X. of 1824, as modified by Section VII. Regulation I. of 1829. My object has been to show, that the form of *roobukaree* generally in use in the office has been made use of in the case of Hosseinee, and that the superior Court have not hitherto remarked upon its irregularity.

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oath, and then, because he had *not spoken the whole truth*, re-arraigning him on the original charge and committing him for trial.

In the last paragraph, the Court remark upon the unfairness and impropriety of first taking the defence of Meah Arjoonund, then examining him on oath, and finally re-arraigning him on the original charge, because he had not spoken the whole truth. I beg respectfully to submit, that my proceedings are borne out by Construction No. 1041, which clearly shows that a prisoner can be re-arraigned after having been examined on oath, on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him. A conditional pardon was offered to Meah Arjoonund and was accepted by him. In due course he was examined on oath, but as I plainly saw that he was concealing the real facts, I at once stopped the examination and did not even allow him to sign the deposition; to this fact I beg to call the attention of the Court.

I however not only acted upon the Construction just referred to, but also upon the precedent of the case noted in the margin. This was a case of dacoity. Two men, named Oodhub Mundul and Purresh Mundul, were offered a conditional pardon, agreeably to Section VII. Regulation I. of 1829, were duly examined upon oath, and having failed to fulfil the conditions of the pardon tendered to them,

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versus
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Dacoity.

were re-arraigned on the original charge, were committed to the sessions, and were convicted and sentenced by the judge. The case was appealed to the Sudder Nizamut Adawlut, and the Court after trying the case upheld the conviction.

I cannot conclude this letter without calling the attention of the Court to the word "unfairness," and I trust that upon re-consideration the judges will not object to withdraw the expression, and should they, after this explanation of my proceedings in the case, still consider that they are worthy of censure, I hope that some other word may be substituted. If my proceedings have been irregular or injudicious, I regret it exceedingly, but when I have acted impartially throughout, and have done my utmost to administer justice to all, I cannot but respectfully protest against being accused of having acted *unfairly* to any one.

Extract from a Letter from the Register of the Nizamut Adawlut No. 1287, dated 21st November 1853.

The Court observe, that the explanation of the magistrate is this, that he offered the prisoner Hossainee a conditional pardon in open court, and on his accepting it, directed his deposition to be taken by *roobukaree* to that effect, in accordance with the rules in force in his office, and which have been so far sanctioned by the superior Court here, that no fault had been found with them, or explanations called for, on previous occasions. With reference to the prisoner Arjoonund, the magistrate quotes Construction No. 1041, as authorizing him to recall a pardon when a prisoner has not acted up to the conditions on which it was tendered to him.

In regard to Hossainee, the Court observe, that no regular proceedings, such as can be denominated a *roobukaree*, is to be found with the *nushee*. There is only an order at the foot of the prisoner's defence, directing him to be struck off the list of prisoners and made a witness, but no mention is there made of a pardon having been formally tendered to him, or of the circumstances which induced the magistrate to adopt

PRESENT.

SIR R. BARLOW, BART., Judge.

BUNOMALEE MOOCHEE AND GOVERNMENT

versus

NUBYE NEEKAREE (No. 8.) DHONAI NEEKAREE
(No. 9.) KYLASS NEEKAREE (No. 10,) AND ROOP-
CHAND NEEKAREE (No. 11.)

CRIME CHARGED.—1st count, highway robbery, with assault, battery and severe wounding, on the person of Bunomalee Moochee, and robbing him of cloth and cash value rupees 15; and 2nd count, assault and battery on, and severely wounding, the aforesaid Bunomalee on the highway, and snatching from his person the above-mentioned cloth and cash.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer—Baboo Issur Chunder Ghosal, deputy magistrate of Santipore.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 23rd July 1853.

Remarks by the sessions judge.—The prosecutor, a weaver by trade, was returning home from market, having disposed of a portion of pieces of cloth he had taken there for sale, and was in company with three other persons who had been to the market on the same account.

the course. The absence of such information misled not only the Court, but also the counsel for the prosecution, who argued before them, that a pardon had not been tendered, and contended that the prisoner had been discharged and made a witness, and that therefore his deposition was the less open to suspicion.

Whatever may have hitherto been the form of *roobukaree* in the Moorsheabad court, and received here without comment, the Court cannot consider the one in question was sufficient to guide them to a conclusion, that a tender of pardon had been made to the prisoner with the caution and formality prescribed by Regulation X. of 1824.

With regard to Arjoonund, the magistrate's proceedings were still more irregular. The Court now find that he made that prisoner likewise an approver, and took his deposition upon oath, though the *roobukaree* which he drew up was to the same effect as the order at the bottom of Hosseinee's confession, and similarly misled the Court. As magistrate, he was not at liberty to recall the pardon on the plea of non-fulfilment. That power, as laid down by the Court's resolution (see page 77, volume V. Nizamut Adawlut Reports) can be exercised by the sessions judge, not by the magistrate, and Construction No. 1041 affords therefore no justification for the magistrate's proceedings. As however the explanation now afforded by Mr. Carnac shows the object and intention of his orders in a different light, the Court are therefore willing to withdraw the term "unfairness" made use of and to exonerate Mr. Carnac from any imputation of that nature.

NUDEEA.

1853.

October 6.
Case of
NUBYE NEE-
KAREE and
others.

Four prisoners convicted of highway robbery, sentenced to ten years' imprisonment in banishment. Appeal rejected.

1853.

October 6.
Case of
NURYE NEB-
KAREE and
others.

About dusk they reached, and were passing through a village, each with a bundle on his head. On their return home, which was situated about a mile distant, when the prosecutor told his associates that being thirsty he would go off the road to a tank distant about 150 or 200 yards, and requested them to wait for him when they got through the village, and he would join them there. They had scarcely reached the place fixed on as the rendezvous, when they heard the prosecutor calling for help and saying he was being robbed and murdered. They immediately ran to his assistance, when they found him lying on the ground with his left arm broken, and saw the four prisoners in the act of running away, with sticks in their hands, and one of them carrying the bundle the prosecutor had on his head when they parted company.

The witnesses swore to recognizing the prisoners, being well acquainted with them by sight, as owing to the proximity of their respective village, they had often seen them, although they were not personally acquainted. Each of the prisoners pleaded an *alibi*, but failed entirely to substantiate them.

Sentence passed by the lower court.—Ten (10) years' imprisonment each, with labor in irons in banishment.

Remarks by the Nizamat Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoners were named immediately by the prosecutor whose arm they broke, as well as by those who were accompanying him, when taken into the village Deegnuggur, where the robbery took place. They were again named before the police the next day, and were not forthcoming for some time after they were charged with the offence. Before the magistrate and the sessions, they were indicated as the persons who committed the assault and robbery, and during the course of the enquiry and the trial have been unable to shake the evidence for the prosecution. Prisoners Nos. 1, 2 and 3, father and his two sons, endeavor to establish *alibi*, but the witnesses were not credited in the court below. They also urge the enmity of some influential land-holder, which has been exercised through the prosecutor for their conviction. On this point they summoned no witnesses.

The prisoner No. 4 pleads *not guilty*, and says he heard that the other prisoners had committed the robbery.

I see no reason to interfere with the session judge's sentence.

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PRESENT :
SIR R. BARLOW, BART., Judge.

CHOKHARAM CHAMAR AND GOVERNMENT

versus

CHOWDHUR SHEIKH (No. 10,) PAUNCHOO SHEIKH (No. 11,) PETUMBER CHUNG (No. 12,) ROWSUN KARIGUR (No. 13,) AND JOYCHAND MUNDUL (No. 14.)

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, and plundering therefrom property to the amount of rupees 39-1, on the night of the 4th May 1853, corresponding with 23rd Bysakh 1260 B. S.; and 2nd count, prisoners Nos. 11 and 13 knowingly receiving a portion of the property plundered in the above dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. C. S. Belli, magistrate of Jessore. Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 19th July 1853.

Remarks by the sessions judge.—From the evidence for the prosecution, it is proved that some ten dacoits attacked the house of the prosecutor.

Nos. 10, 11 and 14, three of them, entered the house (two of them carrying torches) and plundered cash and ornaments to the value of Rupees 39-1. These three were recognized. Nos. 10 and 11, two of them, confessed both before the police and before the magistrate. The confessions of prisoner No. 10 implicated prisoner No. 12, who also confessed and implicated prisoner No. 13, who likewise admitted his fault in the mofussil and in the magistrate's court.

The prisoners before me plead *not guilty*, but their witnesses do not clear them.

I convict them of dacoity and sentence them each to seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The prisoners reside in the same village with the prosecutor. They attacked his house in disguise and beat him. On hearing his cries, the witnesses and others came to the spot and recognized the dacoits Nos. 10, 11 and 14. They implicated Nos. 12 and 13, and all of them, except No. 14, confessed in the mofussil and before the magistrate. The confessions are all duly attested. The prisoners admit that they confessed in the foudaree court, but urge that it was through dread of the darogah and his threats. No evidence of this is adduced. No. 14 was, there is reason to believe, the

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—
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Case of
CHOWDHUR
SHEIKH and
others.
Five prisoners
convicted of
dacoity by the
sessions judge
and sentenced
to seven years'
imprisonment.
Appeal re-
jected.

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October 6.

Case of
CHOWDHUR
SHEIKH and
 others.

person who collected the party. He has all along denied the charge. Numerous witnesses were examined in the sessions court for the defence, but nothing in favor of the prisoners was elicited from them.

The sessions judge's sentence is confirm'd.

PRESENT :

SIR R. BARLOW, BART., }
 AND } *Judges.*
 J. DUNBAR, Esq., }

GOVERNMENT

versus

HUNOOMANBUX SINGH.

SHAHABAD.

1853.

October 7.
 Case of
HUNOOMAN-
BUX SINGH.
 Prisoner, con-
 victed of affray
 with culpable
 homicide and
 wounding, sen-
 tenced to seven
 years' im-
 prisonment. The
utti set up by
 the prisoner on
 the strength of
 a bond, bearing
 the date on
 which the af-
 fray occurred,
 was skilfully
 exposed by the
 judge.

CRIME CHARGED.—Affray attended with culpable homicide of Ajoodhya Singh and Ramgholam Singh on one side and Joykishen on the other side, and severely wounding Shewdyl Singh, Mahadeobux Singh and Lutchmee Singh on one side.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Ajoodhya Singh and Ramgholam Singh on one side and Joykishen Singh on the other side, and severely wounding Shewdyl Singh, Mahadeobux Singh and Lutchmee Singh on one side.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 10th May 1853.

Remarks by the sessions judge.—The prisoner is charged with participation in the affray described in the above case.

His presence and active participation is positively sworn to by witnesses for the prosecution, and the deceased Joykishen, in his dying declaration, swore to the same fact. He is one of the principal men on the side of Ajoodhya Singh.

The prisoner has, the three months during which he evaded process, employed himself in concocting an elaborate defence, evincing great pains and some ingenuity, but like most fabrications, it is over-done.

He alleges that from the 23rd Assin (three days before) until some days *after* the occurrence, he took a tour, and on the 26th, i. e. the *very day of the affray*, he was at the house of Bhoopraj Singh (witness No. 18,) and then and there executed a bond for rupees 131 in favor of the above person.

The testimony of the witnesses, in support of all the circumstances alleged, is, as might be expected, perfectly consistent

and uniform. Every step of his ways is established before the magistrate. His travelling companions and the persons with whom he stopped, and if the witnesses' story is to be believed, the prisoner's exculpation is complete.

But I have not the slightest hesitation in pronouncing the whole to be a fiction and rejecting the entire evidence as utterly false.

The grounds of this opinion are these. In the first place, it is too remarkable a circumstance, that a man whose presence and participation in the affray is shown to by eye-witnesses, and who, by his own showing, is one of Baboo Kour Singh's principal enemies, should, on the very day that this great fight between the parties took place, have happened to be peaceably engaged some sixty miles off, in executing a bond in the presence of witnesses, and thus so providing himself unwittingly and such clear and decisive proof of innocence.

It may be fairly stated, that such a circumstance raises *prima facie* strong suspicion against the truth of the tale, but the fact which at once to my mind gives the lie to the whole story and would counter-balance a wilderness of witnesses is, that although this deed is said to have been executed on the 26th and thus forms *per se* a complete and perfect refutation of the charge against the prisoner, yet neither the prisoner himself nor his mookhtar, nor his vakeel engaged to conduct his defence, have taken any steps whatever to produce the document before the court. The witness Bhoopraj Singh, who is the obligee, was asked whether the prisoner, or any on his behalf, had asked him to produce this document, and he said, "No!" The confusion and embarrassment of the witnesses and prisoner's counsel on this day of the proceedings strongly confound the suspicion excited by the improbability of the story.

It is utterly incredible, that had this document been really genuine, the parties so *deeply interested* in its production should have thus neglected to take the slightest step to produce it.

If a deed was executed, it was on my requisition only that it was produced, the witness Bhoopraj being sent with a *chuprassi* to bring it.

But it appears, that he not only executed the deed, but that the obligee has already sued him in the moonsif's court for the amount, within two months of the execution of the deed.

The record of this case I sent for inspection, and although every thing has been consistently got up, the fact becomes to my mind still more undeserving of credit. The answer of the defendant in this suit of the prisoner admits

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Case of
HUNOOMAN-
BUX SINGH.

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October 7.

Case of
HUNOOMAN-
BUX SINGH.

the *execution of the bond on the date referred to*, though it denies the receipt of the whole sum borrowed and pleads payment—exactly the species of answer calculated to *meet the object* and yet not involve the party.

The assessor's verdict acquitted the prisoner on the ground of this evidence.

I am fully convinced of its entire falsity and have sentenced him accordingly.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. Dunbar.)—The prisoner is charged with affray attended with culpable homicide of three persons and the severe wounding of three others.

Several individuals have already been sentenced in the case. The prisoner was apprehended three months after the occurrence, and was subsequently tried by the sessions judge. He has appealed against the order of conviction by that officer, who differed with the assessors on the trial, whose opinion was for acquittal. The prisoner is mentioned in the statement upon oath of Joykishen, who died of his wounds soon after, taken a few hours after the affray, as having taken a very active part in the fight; and from the first moment and throughout the various examinations and depositions taken in the course of the mofussil enquiry and the trial, the witnesses have uniformly named him and distinctly sworn to his recognition as one of the leaders in the affray.

They have told a plain story, which is unshaken to the last and which carried conviction to the mind of the sessions judge of the prisoner's criminality, in despite of the more than minute evidence and the multiplicity of witnesses brought forward in the prisoner's defence of *alibi*.

It is attempted to prove, that the prisoner, three days before the occurrence, left home to sell two horses at Hajeeapore fair; that he went there, bought two and borrowed money for the purpose at Bussuntpore from one Bhoopraj, giving him a bond for rupees 131 on the very day of the affray. Two witnesses' names are in the calendar, who attested the bond. Three others are named to depose that they stopped *en-route* at Bhoopraj's house on seeing the prisoner there. He invited them to remain there for the night. They are unacquainted with Bhoopraj. The prisoner told them he had come there to borrow money to buy horses. Several other witnesses are cited to prove the prisoner's presence at this place, and at that time in his progress to and from the fair and throughout his journeyings. He at last meets, as he says in his defence, a *dossadh* or a *hujam*—he knows not

which—the bearer of a note from his brother to him, mentioning the fight which had taken place. On this he immediately turned homewards, and on his arrival heard that the deceased Joykishen had implicated him in the affair and he at once went to surrender himself to the magistrate. Why a total stranger, charged with such important intelligence, should have been employed on the occasion, and how he happened to recognize the prisoner and to find him so opportunely in his wanderings of three months' duration, and why such an exact memorandum of dates and circumstances connected with the prisoner's journey should have been kept and so firmly fixed in the recollection of the numerous witnesses cited for the defence, when no special cause existed for it, is not explained and is not to be accounted for otherwise than by adopting the sessions judge's views.

Regarding one date, however, there is no room for mistake, and if the evidence on that point be held to be true and trustworthy, the whole prosecution breaks down. The bond adverted to was the subject of an action in the moonsiff's court. Bhoopraj, the plaintiff, not having, as he says, received any answer to his letters to the prisoner, calling for payment of the amount of it, which fell due within the course of a month from its execution, sued him. The plaint was brought, the judge states, within two months of date of the bond, and the proceedings on that record, as detailed by the sessions judge in this trial, certainly justify the conclusion at which he has arrived, that the whole transaction, bond, plaintiff and answer, is collusive.

Ample time, it is to be remarked, was gained during the period of the prisoner's protracted absence of three months, to prepare and complete his defence and to bring together witnesses in support of the *alibi*. The defence is exactly that which a native would set up—a defence to which, strange to say, resort is constantly had on these occasions, although it usually fails.

Mr. Waller for the prisoner relies on this defence and on the witnesses cited.

We discredit the whole story of the prisoner's absence during the affray and the witnesses summoned in support of the *alibi*, as a defence carrying on the face of it unmistakeable marks of an elaborate and deeply laid scheme to evade justice—improbable on the data on which it is founded, and most weak from its very nature and obvious design, and which will not bear the test of close and careful analysis. If such a defence and such evidence be admitted as valid and good in courts of justice, every prisoner is sure of an acquittal.

1853.

October 7.
Case of
HUNOOMAN-
BUX SINGH.

1853.

October 7.Case of
HUNOOMAN-
SUX SINGH.

We uphold the sessions judge's sentence, which, notwithstanding the great loss of life, we consider adequate, as the affray was not pre-meditated and arose out of words of abuse which passed on the spot.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

GOORBIN BANAY KHOTTA (No. 6,) BHUGOBAN GHOSE (No. 7,) HULLODHUR MALLA (No. 8,) SHISTEEDHUR MALLA (No. 9,) SHEESOO GHOSE (No. 10,) RAMDHUN GHOSE (No. 11,) BHOLANATH GHOSE (No. 12,) AND ISHEN MALLA (No. 13.)

HOOGHLY.

1853.October 7.Case of
GOORBIN BA-
NAY KHOTTA.
and others.

Five prisoners sentenced to transportation for life and three to fourteen years' imprisonment on conviction of having belonged to a gang of dacoits.

CRIME CHARGED.—Having belonged to a gang of dacoits. Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 17th September 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the commissioner for the suppression of dacoity, and are charged with having belonged to a gang of dacoits. They plead *not guilty* to the indictment.

The principal evidence against the prisoners is that of an approver, who details twelve river dacoities, with particulars of time and place, and proves the complicity therein of all the prisoners. He gives a very clear account of the affairs and mentions incidents and events connected with them, which strongly marks the recital with the stamp of truth. The prisoners Goorbin Banay and Hullodhur Malla are named as the leaders in most of the expeditions described.

The other direct proof against the prisoners is also the evidence of a confessing dacoit, though one not yet admitted to the privileges of approvership. His testimony is clear and circumstantial, and he describes one river dacoity, one attempt to commit, and two goings forth with intent to commit the crime, implicating all the prisoners as more or less concerned in those undertakings. The complete dacoity was committed near Goopteeparah, where a quantity of *tussur* silk was got as booty. The attempt to commit took place at Augurdeep, where the gang cut the moorings of a boat and allowed her to drift down the stream, but in attempting to board, found the crew up and prepared for resistance, and in consequence abandoned the project. The first going

forth was down the river in the direction of Ooloobariah, where the setting-in of the flood-tide prevented their progress and induced them to return to Calcutta; and the last was the occasion, when five of the prisoners, together with the witness, were taken by a patrol boat of the 24-Pernunnahs.

Two police burkundauzes, under the command of the darogah of Chitpore, arrested the prisoners Goorbin Banay, Hullodhur Malla and others, in a suspicious-looking boat, and give evidence to the fact. The darogah had got intelligence that river dacoits were prowling about and had gone out for the purpose of arresting them. While the seizure was in process, one of the crew of the boat jumped overboard, and swimming to shore, effected his escape. In the boat were found a sword and some *lattees* or clubs.

All the prisoners, with exception to prisoner Ramdhum Ghose, made some sort of admission before the commissioner for the suppression of dacoity, and all these recorded statements are verified. The prisoners Shishee *alias* Shisteedhur *alias* Ishur Ghose and Bholanath Ghose, however, made full and clear confessions of crime. The admissions of the rest, though distinctly repudiating criminal complicity, are in their nature such as justly to warrant the fullest suspicion, that all the prisoners are, and have for some time been, a banded body, intimately acquainted with each other and not unfrequently acting in concert.

Among the witnesses examined on the trial was the darogah of the Kaleeghaut thannah, who states that he took up the prisoner Goorbin Banay, one and a half years ago on suspicion, of being concerned in a dacoity that had lately been committed at Nunceah, and that although that individual denied having taken any share in the affair in question, he admitted his participation in a river dacoity committed near Sooksagur in the Nuddea district. In searching the prisoner's house, the darogah found a Bank of Bengal note of rupees 50, which he forwarded to the magistrate. On referring to the record of the confession, I find it dated 14th March 1852, and embodying a disclosure on the part of the prisoner of participation in two dacoities, in one of which he got, among other property as his share of the booty, the bank-note of rupees 50 above mentioned.

The witness Bhootnath Manjee, attached to one of the Howrah guard boats, deposes that he once arrested the prisoner Goorbin Banay and Hullodhur Malla, with others, in a boat which had on board some *lattees* and large stones. His notice was attracted to the boat by the manjee, who gave him a hint as to the crew and their calling and occupation.

1858.

October 7.
Case of
GOORBIN BA-
NAY KHOTTA
and others.

1853.

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Case of
GOORBIN BA-
NAY KHOTTA
and others.

The prisoners make no defence before this court, and all they plead in extenuation is a good character, to which, however, only one, the prisoner Ramdhan Ghose, cites witnesses. I examined two persons on his behalf, but the prisoner's plea is not established by their evidence.

I have very carefully weighed the evidence brought against the prisoners. It is not very full, but it is abundant for the purposes of their conviction, because there is no part of it at which I can cavil. The approver's evidence is unexceptionable and it receives corroboration and support, from the testimony of the witness Govind Ghose and the admissions made by the prisoners. The statements made by the darogah of Kaleeghaut and the witness Bhootnath Manjee are also valuable as presumptive evidence. Entertaining these views, and believing the prisoners to have been associated with an organized gang of dacoits, who have long been known to commit degradations in the river, both above and below Calcutta, I recommend that they be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) —The charged, not prisoners are with any overt act of dacoity, but merely with having belonged to a gang of dacoits. The evidence adduced sufficiently establishes the fact, that on various occasions the prisoners have to a greater or less extent been concerned in dacoities systematically carried on by certain leaders. The approver's testimony is confirmed in great part, by that of one of the dacoits admitted to give evidence and by the confessions of prisoners Nos. 6, 10 and 12. The following statement shows the number of robberies, in which the prisoners have been concerned :—

PRISONERS.	<i>No. of dacoities according to statement of approver.</i>		<i>No. of dacoities according to statement of Govind.</i>
	No. 6	No. 7	No. 8
" 6		13	1
" 7		8	3
" 8		6	3
" 9		2	1
" 10		6	1
" 11		1	2
" 12		2	1
" 13		7	1

From this statement, it is evident, not only that Govind's experience is much more limited than that of the approver, but that some of the prisoners have been less frequently in the habit of joining in those marauding expeditions than others. Where this is the case, from whatever cause, I think it is reasonable to draw a distinction between them. Where the

habit has not become inveterate, there is hope of amendment after temporary imprisonment, and I think more advantage may be looked for, from keeping some under punishment in this country than from indiscriminate transportation. As not more than three instances are charged against either of the prisoners Nos. 9, 11 and 12, I sentence them to be imprisoned with labor in irons in banishment for fourteen (14) years, and the whole of the others to imprisonment for life in transportation.

1853.

October 7.
Case of
GOORBIN BA-
NAY KHOTTA
and others.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

SHEWDYAL SINGH (No. 7 APPELLANT,) MAHADEOBUX SINGH (No. 8 APPELLANT,) LUTCHIMEE SINGH (No. 9 APPELLANT,) BISSESSUR SINGH (No. 10 APPELLANT,) SILEWRUTTUN SINGH (No. 11 APPELLANT,) JOYGOPAUL SINGH (No. 12 APPELLANT,) RADHA SINGH (No. 13 APPELLANT,) HOSSEINEE DHOONEAH (No. 14 APPELLANT,) PUHLOO AUHEER (No. 15,) AUDIT AUHEER (No. 16,) AND LUTCHMEE SINGH AND COSSEE SINGH (Nos. 1 AND 2 OF THE SUPPLEMENTARY CALENDAR.)

CRIME CHARGED.—Affray attended with culpable homicide of Ajoodhya Singh and Ramgholam Sing on one side and Joykishen Singh on the other side, and severely wounding of Shewdyal Singh, Mahadeobux Singh and Lutchmee Singh on one side.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Ajoodhya Singh and Ramgholam Singh on one side and Joykishen Singh on the other side, and severely wounding of Shewdyal Singh, Mahadeobux Singh and Lutchmee Singh on one side.

Committing Officer—Mr. J. Combe, joint magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 4th May 1853.

Remarks by the sessions judge.—This is a very serious and tragical case of affray, in which three lives have been lost and three men severely wounded.

The belligerent parties are the servants and dependants, respectively, of Baboo Kour Singh and Musst. Uchruj Kour, wife of the Baboo's brother, Rajputtee Singh.

SHAHABAD.

1853.

October 7.

Case of
SHEWDYAL
SINGH and
others.

Conviction, and
sentence passed
by the sessions
judge in a case
of affray attend-
ed with culpable
homicide and
wounding, up-
held in appeal.

1863.

October 7.

Case of
SHEWDYAL
SINGH and
others.

Rajputtee Singh is *non compos*, and his wife Uchruj Kour, who has the management of his affairs, has rendered herself somewhat notorious in the district and is regarded with much disfavor by Baboo Kour Singh, the head of the family.

Kour Singh is a powerful and influential zemindar, the head of the Rajpoots, a fine old gentleman in many respects, but somewhat prone to violent measures when thwarted.

Disputes and quarrels have been for some time rife between Kour Singh and Uchruj Kour, and much bitterness and hatred has been the result, not only between the principals, but among their servants and attaches also.

This is beyond a doubt the real secret of this affray.

Joykishen Singh, one of the murdered men, was the servant of Baboo Kour Singh; Ajoodhya Singh and Ramgholam Singh, as well as the three wounded men are the servants of Uchruj Kour. The evidence shows that the servants of this woman were seated near a tank on the village of Jugdeespore, on the day of the *mohurrum*, with swords, shields and sticks, and that while they were thus seated, Joykishen Singh, with a large body of Baboo Kour Singh's followers, came to the spot; that words passed between them and a savage fight ensued, in which, as might have been expected, the party of Uchruj Kour fared the worst, two of them being killed and severely wounded, while on the side of Kour Singh's party, the head man, Joykishen Singh, was only injured.

He (Joykishen) was Ajoodhya Singh's deadly personal enemy.

The presence and participation of all the prisoners is established by the evidence by several eye-witnesses unconnected with either party.

The prisoners, Nos. 1 and 2 of the supplementary calendar, set up a plea of *alibi* and brought forward numerous witnesses to establish the fact, but their evidence completely broke down in cross-examination.

They are own brothers to Joykishen Singh, the leader of the baboo's party, and the *only respectable* men on that side who have been arrested. A great effort has accordingly been made to obtain their acquittal.

The pleas of the prisoners Nos. 7, 8 and 9 have only reference to the details of the affray and the part taken by each.

Prisoners Nos. 10, 11, 12 and 13 say that they were two *coss* off; prisoner No. 14 that he was at the distance of seven *coss*; No. 15 that he was in his village at three *coss*, and No. 16 that he was two *coss* off from Jugdeespore. They all gave evidence in support of their plea, but not such as to shake that for the prosecution.

The case has been greatly mismanaged from the first, and I feel very confident that the true facts have been concealed.

I am strongly inclined to believe, that the occasion offered by the *mohurrum* was taken advantage of to get rid of Ajoodhya Sing, the personal and deadly enemy of Joykishen, and a man *peculiarly obnoxious* to Baboo Kour Singh himself.

A few months before the affray, the magistrate had sworn the peace against Kour Singh at the instance of Ajoodhya, and his body was hacked with wounds.

The result shows that the attacking party was by *far* the strongest, and though Joykishen lost his life, no *others* on that side were wounded at all.

Connected with this case I beg to annex copies of the correspondence,* that has passed between myself and the magistrate and joint magistrate on the subject.

I have little doubt that the misplaced courtesy displayed towards Kour Singh had the effect of preventing witnesses coming forward, and the real facts have been much disguised.

The assessors found all the parties *guilty* of the crime charged.

I sentence prisoners Nos. 1 and 2 of the supplementary calendar to reduced punishment, as neither appear to have taken a prominent part in the affray, and Lutchmee Singh is quite as bad.

Sentence passed by the lower court.—Nos. 7 to 16, each to be imprisoned with labor in irons for seven (7) years; No. 1 to be imprisoned with labor in irons for five (5) years; No. 2 to be imprisoned without irons for one (1) year, from the 4th May 1853, and to pay a fine of rupees 25 on or before the 19th May 1853, in default to labor until the fine be paid or the term of the sentence expire.

Remarks by the Nizamut Adawlut.—(Present-Mr. J. Dunbar.) —Moonshee Ameer Alee appeared for prisoners Nos. 10 to 14, Baboo Jugdanund for Nos. 7, 8 and 9, and Baboo Sumboonath Pundit for the prosecution.

On looking into the preliminary proceedings, I find that the witnesses first examined were chiefly those who had been named by the wounded men themselves, and that it was not without considerable difficulty that five or six days after the affray, other persons, fully acquainted with the facts, were discovered and brought forward by the police. These are the persons on whose evidence the sessions judge has relied, and without placing implicit confidence in their statements as to the successive and varying incidents of the fight and the particular blows struck by the parties on either side, I see no reason whatever to doubt their testimony as to

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Case of
SHEWDYAL
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others.

* Not printed.

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SHEWODYAL,
SINGH and
others.

the main facts. According to that testimony, the whole of the prisoners were more or less actively engaged in the affray, which, as remarked by the sessions judge, was one of a most serious and tragical character. The sentence is confirmed.

PRESENT :

J. DUNBAR, Esq, Judge.

GOVERNMENT

versus

ZAREEF SHIKAREE.

HOOGHLY.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

1853.

October 8.
Case ofZAREEF SHI-
KAREE.Prisoner con-
victed of hav-
ing belonged to
a gang of da-
coits, sentenced
to transporta-
tion for life.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 24th September 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed by the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits. He admitted the charge and made detailed confessions of twenty dacoities before that officer. The evidence of the approver, Zameer Shikaree, convicts him on the trial of two dacoities, and he pleads *guilty* before this court. I heard several of the detailed confessions of the prisoner and found them to be a full and clear statement of the transactions, given with *minutiae*, which markedly invest it with an air of truth. His restricted confession is also a trustworthy recital, being a cursory review of his bandit life from the age of 22.

The prisoner's guilt is beyond all question, and I propose that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) The evidence is fully sufficient. The statement now made by the approver on oath corresponds with that given respecting the prisoner in his original confession. The prisoner himself pleads *guilty* and his detailed confession, before the commissioner for the suppression of dacoity is proved by two witnesses to have been freely and voluntarily made, while the occurrence of nearly the whole of the dacoities, referred to in his confession, is certified from the records. The prisoner may truly be said to have lived by plunder during the past six or seven years.

The sentence of the Court is that he be transported for life.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT
versus
ALEE SHIKAREE.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity.●

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 24th September 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed by the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits. In his examination before that officer he made a detailed confession to having committed twenty-one dacoities, and admitted the charge on which he was arraigned. He pleads *guilty* before this court and is convicted by the evidence of an approver, who proves his complicity in three dacoities. His detailed confession is marked with a perspicuity and fulness which recommends it to the mind as truth, and his restricted admission is a brief summary of his career as a dacoit from the early age of 12 or 14.

I convict the prisoner of having belonged to a gang of dacoits and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The detailed confession of the prisoner is proved; by the person who wrote it and by another witness. The prisoner himself pleads *guilty*. The three dacoities sworn to by the approver are identical with three of those set forth in the prisoner's statement; and confirmatory evidence of the commission of seventeen, out of the twenty-one confessed, has been furnished from the records.

The sentence of the Court is that he be transported for life.

HOOGHLY.
 1853.

OCTOBER 10.
 Case of
ALEE SHIKAREE.

Prisoner convicted of having belonged to a gang of dacoits, sentenced to transportation for life.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

MEELUCK SHIKAREE (No 1,) **DWARI SHIKAREE** (No. 2,) **SHAGUR MOOCHEE** (No. 3,) **BISHONATH GYN** (No. 4,) **ANNUNTO BAGDEE** (No. 5,) **RAMCOOMAR TEOR** (No. 6,) **MODHOOSOODUN alias MODHOO BAGDEE** (No. 7,) **MOROOF SHIKAREE** (No. 8,) **GOPALDASS KYBURT** (No. 9,) **SHADOO MOOCHEE** (No. 10,) AND **TARUCK BAGDEE** (No. 18.)

HOOGHLY.**1853.****October 10.****Case of****MEELUCK
SHIKAREE
and others.**

Of eleven prisoners charged with dacoity and of having belonged to a gang of dacoits, seven were sentenced to transportation for life and four to sixteen years' imprisonment in banishment.

CRIME CHARGED.—1st count, dacoity in the house of Madhubchunder Dutt at Chinsurah, on the night of the 20th January 1849, in which property to a large amount was plundered, and 2nd count, belonging to a gang of dacoits.

Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 21st September 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the commissioner for the suppression of dacoity, and are charged with dacoity in the house of Madhubchunder Dutt at Chinsurah and with having belonged to a gang of dacoits. They plead *not guilty* to both counts of the charge.

The direct proof against the prisoners is the evidence of two approvers, taken at different times and under every precaution to prevent collusion. The statement made by one of them is clear, full and circumstantial; that by the other is of a less detailed character and altogether not such valuable evidence. It speaks, however, to the dacoity charged against the prisoners and details the particulars of two other dacoities and an attempt to commit one, in which it proves the complicity of all the prisoners except Ramcoomar Teor (No. 6,) Modhoosodun *alias* Modhoo Bagdee (No. 7,) and Shadoo Moochee (No. 10.)

The dacoity charged is a very remarkable one and formed the topic of the day when the event took place. Madhubchunder Dutt, reputed as possessing considerable wealth, resides in a two-storied house, the base of which is washed by the waters of the Hooghly. The dacoity was planned by three famous sirdars, Gopal Dome, Gour Shikaree,

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and others.

and Rajee Byragee, and executed under their leadership by the prisoners and others, almost as notorious gang robbers as themselves. The gathering took place in a garden, on the opposite side of the river, and the gang went across in two boats and landed at a spot to the north of Madhub's house. Here the prisoner Dwari Shikaree volunteered to reconnoitre the quarters and see if all was quiet. He returned, reporting the guards asleep, and proposed an immediate advance. The gang then hastily performed *kali-poojah* and proceeded to the attack, leaving the two boats in the charge of Rajee Byragee and the prisoner Bishonath Gyn, and desiring those persons to drop down and move directly in front of Madhub's house, to facilitate the retreat. The advance party planted a bamboo against the parapet of the lower verandah and climbed up to the terrace. As soon as they were perceived, they were challenged by the guard, but the prisoner Dwari Shikaree and Nepal Dome rushed on their opponents, and having felled one man to the ground and driven off the other, they bound and secured the fallen *brijabashi*. The venetians and doors were then forced, and the rest of the gang admitted by the prisoner Dwari through the gate leading to the river. The destruction of almirahs, drawers, trunks, boxes, &c. to an immense extent, and the abstraction of a very considerable amount of property in cash and jewels, are described as the result of the attack. The people of the town of Chinsurah seem to have assembled in considerable force, to oppose the dacoits, and fired on them with shot as they retreated across the river in their boats. The gang were also armed with guns and pistols and returned the fire while on shore, but only with blank cartridge I suspect.

A servant of Madhub Dutt speaks to the dacoity and gives an account of how he was first struck on his way down-stairs, how he ran off and closed all the windows and shutters and hid himself, how he was dragged from his hiding-place, and how he refused to give any information regarding the whereabouts of his master or the valuables in the house, though required to do so under threats and ill-use.

The police darogahs of Nyehatty and Kudumgachee pronounce the prisoners as men of notoriously bad character, and repeatedly named in dacoities and arrested on suspicion of committing them.

The prisoner Meeluck Shikaree denies the charge and prays reference to the original record of the magistrate, relating to Madhub Dutt's dacoity, from which it will appear that he has been already tried for the offence and acquitted. He has no witnesses to call to his defence.

The prisoner Dwari Shikaree charges the approver Mubarik Mundul with having brought this accusation falsely against

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him for having, on two occasions, while a chowkeedar, caused the arrest of Mubarik. He cites witnesses to good character.

The prisoner Shagur Moochee brings the same accusation against the approver Mubarik, on the alleged account of a quarrel between them about some fire for smoking while fellow-prisoners in the Baraset jail. He calls witnesses to good character.

The prisoner Bishonath Gyn charges the approver Behari Singh with accusing him falsely, in consequence of his having deprived him of some cattle he was about selling to butchers for the purpose of being slaughtered for food. He cites witnesses to good character.

The prisoner Annunto Bagdee declares the charge false and maliciously brought against him by the approver Mubarik, for having once beaten him with a shoe and got him fined rupees 5 for absence from home, without notice to the *gomashta* and *munduls* of the village, under whose surveillance he was placed by order of the magistrate, and for having caused his arrest in the Rungpore dacoity. He accuses the approver Behari with charging him falsely, in consequence of his having assisted the foregoing prisoner to deprive him of the cattle destined for the slaughterhouse. He calls witnesses to good character.

The prisoners Ranicomar Teor, Modhoo Bagdee and Shadoo Moochee make the same defence as the prisoner Meeluck Shikaree, and call no witnesses.

The prisoner Moroof Shikaree denies the charge and lays it to the account of a quarrel he had with the approver Mubarik, while confident with him in the commissioner's guard, and the fact of his having caused his arrest on one occasion on a charge of plunder of corn. He calls witnesses to character.

The prisoner Gopaldass Kyburt charges both the approvers with accusing him falsely and maliciously, without assigning any cause for the proceeding, and cites witnesses in proof of a good character.

And the prisoner Taruck Bagdee contents himself with a simple denial of the charge, making no defence and calling no witnesses.

Seventeen persons were examined on behalf of the prisoners, but all concurred in pronouncing them men of bad repute, and on referring to the record of the magistrate's proceedings in the matter of the dacoity charged, I find it plainly and expressly declared that the release of the persons then discharged was purely conditional and was not to bar subsequent measures against them, should information hereafter be elicited calculated to show that they participated in the crime.

After a very careful weighing of the evidence adduced on the trial, and coupling with it the utter futility of the

defences set up, I convict the prisoners Meeluck Shikaree (No. 1,) Dwari Shikaree (No. 2,) Shagur Moochee (No. 3,) Bhisho-nath Gyn (No. 4,) Annunto Bagdee (No. 5,) Moroof Shikaree (No. 8,) Gopaldass Kyburt (No. 9,) and Taruck Bagdee (No. 18 of calendar No. 5 of August 1853) of dacoity and having belonged to a gang of dacoits, and recommend that they be transported for life. I also convict the prisoners Ramcoomar Teor (No. 6,) Modhoosodun *alias* Modhob Bagdee (No. 7,) and Shaddoo Moochee (No. 10,) of dacoity in the house of Madhubchunder Dutt, and sentence them to fourteen (14) years' imprisonment with labor in irons in banishment, and two (2) years more in lieu of corporal punishment, making in all sixteen (16) years, but suspend the execution of such sentence until the receipt of the Court's final orders on the reference now made.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The detailed confession of Mubarik Mundul was recorded in the month of March 1853, that of Behari Singh in July following ; and the commissioner for the suppression of dacoity states, that every possible precaution was taken to prevent collusion between them. I see no reason therefore to distrust their evidence on oath, corresponding as it does with the statements made in their confessions, and confirmed as it is to a certain extent by the records, which prove the occurrence of nearly all the dacoities mentioned, and by the testimony of two darogahs, who speak of the prisoners as notorious bad characters. According to that evidence, there is not one of the prisoners who is not proved to have been concerned in more than one dacoity. I cannot therefore concur with the additional sessions judge in convicting the prisoners Nos. 6, 7 and 10 on the first count only. I convict the whole of the prisoners on both counts. In awarding punishment, however, it seems reasonable to make a distinction between those who have been more and those who have been less frequently engaged in dacoities. I accordingly sentence the whole of the prisoners, as proposed by the sessions judge, with the exception of Moroof Shikaree (No. 8,) who falls within the class of apparently less hardened offenders, and is accordingly sentenced to the same punishment as prisoners Nos. 6, 7 and 10.

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October 10.
Case of
MEELUCK
SHIKAREE
and others.

PRESENT:

SIR R. BARLOW, Bart., Judge.

MEELUN SINGH AND GOVERNMENT

versus

KUPOOR PASEE.

PATNA.

1853.

October 13.

Case of

KUPOOR

PASEE.

Prisoner, convicted of knowingly having in his possession property obtained by theft, sentenced to sixteen years' imprisonment in banishment.

CRIME CHARGED.—1st count, theft of property valued at rupees 710-11-6, belonging to Meelun Singh, prosecutor, and 2nd count, knowingly having in his possession cloth, &c., valued at rupees 9-8, part of property obtained by the above theft.

CRIME ESTABLISHED.—Knowingly having in his possession cloth, &c., valued at rupees 9-8, part of the property obtained by theft.

Committing Officer—Mahomed Nazim Khan, principal sudder ameen of Patna, exercising powers of a magistrate.

Tried before Mr. B. J. Colvin, commissioner of Patna, with powers of a sessions judge.

Remarks by the commissioner of Patna, with powers of a sessions judge.—The prosecutor's house was robbed of property worth rupees 710-11-6, on the night of the 29th ultimo.

Before day-light on the 30th, the prisoner was apprehended by witness No. 1, a *bukundauze*, with a bundle of property, regarding which, when he was questioned, he said he was a washerman and the clothes had been given to him to wash. He was required to show them, when it was seen that there were some colored clothes in the bundle, and after an attempt on the prisoner's part to escape, he was apprehended. The prosecutor hearing of the circumstance went and recognized his property, as his witnesses have also done before the committing officer and in this court. The prisoner's answer in both courts is, that one Kunhye Singh gave him the clothes out of charity, but he has not ventured to summon that individual and says that he would not deposito such effect. The law officer convicts of the second count, in which I concur. The prisoner is an old offender and has been imprisoned on four occasions, on one of them by the sessions court for five years. I have sentenced him under Clause 3, Section IV. Regulation XII. 1818 to fourteen (14) years' imprisonment and two (2) years in lieu of stripes, altogether sixteen (16) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The evidence against the prisoner is complete and the sentence awarded by the officiating commissioner is just and proper. The Court observe that the law, Clause 3 Section

IV. Regulation XII. 1818, quoted by the officiating commissioner, sanctions the period of imprisonment assigned, but not *banishment*, which does not form any part of the penalties which are attached to receipt of stolen property knowing it to be such. They presume that banishment has been awarded under Clause 3 Section VIII. Regulation LIII. 1803.

1858.

October 13.
Case of
KUPOOR
PASEE.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

SHEIKH AUZEEMOODDEEN (No. 14,) RAMJAUN MUNDUL (No. 15,) BOROO SHEIKH (No. 16,) TINCOWREE MUSSULMAN (No. 17,) AND SHOOBUL MOOCHEE (No. 18.)

CRIME CHARGED.—1st count, having committed a dacoity in the house of Ramchund *alias* Ramkomul Gangolee, at Ooltadangee, on the 4th June 1848, in which property to the amount of rupees 60-11 was plundered; 2nd count, having committed a dacoity in the house of Madhubchunder Dutt on the 20th January 1849, in which property to a large amount was plundered; and 3rd count, having belonged to a gang of dacoits.

Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr J. H. Patton, officiating additional sessions judge of Hooghly, on the 22nd September 1853.

Remarks by the officiating additional sessions judge.—The prisoners are committed by the commissioner for the suppression of dacoity and are charged on three counts—1st, dacoity in the house of Raunchand *alias* Ramkomul Gangolee; 2nd, dacoity in the house of Madhubchunder Dutt; and 3rd, having belonged to a gang of dacoits. The plea of the prisoners is *not guilty*.

The approver's evidence against the prisoners in this case is very strong, and taken, as it is alleged to have been, with the utmost care, to prevent collusion between the deposing parties, must be received as conclusive of their guilt. The witness Mubarik gives a very full and detailed account of the events he speaks to and brings home all three counts of the charge to the whole of the prisoners, in a manner that stamps his statement with the impress of truth. The evidence of Zameer Shikaree (witness No. 2) is an equally credible recital and implicates all the prisoners in the commission of the crimes stated in counts 1 and 3 of the indictment in a clear and distinct manner. The testimony of the witness No. 3, Behari Singh *alias* Kurma

HOOGHLY.

1853.

October 15.
Case of
SHEIKH
AUZEEMOOD-
DEEN and
others.

Five prisoners,
charged with
dacoity and
with having
belonged to a
gang of dacoits,
convicted and
sentenced to
transportation
for life.

1853.

October 15.
Case of
AUZEEMOOD-
DDEEN and
others.

Mussulman, is confined to the proof of the 2nd count of the charge, in which it satisfactorily establishes the complicity of all the prisoners. The approver Mubarik speaks to four dacoities, besides the two especially charged, and the approver Zameer Shikaree to three, independant of the Ooltadangee affair.

As I have detailed the particulars of the dacoity in the house of Madhubchunder Dutt, in my letter of reference No. 80, of yesterday's date, connected with the trial of Meeluck Shikaree and ten others, (calendars No. 1 of July and 5 of August of the commissioner for the suppression of dacoity,) I have not deemed it necessary to recapitulate them here. There is nothing remarkable in the features of the Ooltadangee dacoity. It was planned by Rajoo Shikaree and executed under his leadership. The approvers Zameer Shikaree and Mubarik Mundul joined the expedition and furnished hands for it. The *rendezvous* was the garden of Baboo Aushootos Dey at Belgutchia, and when the gang was collected, they moved forward to a plain to the east of Ooltadangee, where they made their final preparations and performed *kalce-poojah*. They found the house of Ramchand Gangolee surrounded by a brick wall, which was soon scaled by one of the party and the outer gate opened. *Mussals* were then lighted and the work of plunder consummated. The booty amounted to about rupees 250, in shawls, cash and jewels.

Two parties, as evidence for the prosecution, affirm that they were present when the police darogah held the enquiry into the Ooltadangee affair and signed the record or *sooruthal*, and another details the attack made on the house of his master Madhub Dutt. I have made allusion to the testimony given by this witness in my letter of reference above adverted to.

The police darogah of Nyehatee and Kudumgachee prove that all the prisoners are men of notoriously bad character, particularly the prisoners Sheikh Auzeemooddeen (No. 14), Ramjaun Mundul (No. 15) and Tincowree Mussulman (No. 17,) who were taken up in a dacoity committed in the house of Enayet Kazee, together with some of the plundered property, and confessed before the police. The two former were also named as participants in two other dacoities.

The prisoner Auzeemooddeen charges the approver Mubarik with bringing this accusation against him falsely and maliciously, for having arrested him when an absconded offender in times past, but declines to call the witnesses named to his defence.

The prisoner Ramjaun brings the same charge against the same approver for attempting to arrest him under the same circumstances. He also declines to call his witnesses.

The prisoners Boroo Sheikh, Tincowree Mussulman and Shoobul Moochee accuse the approver Mubarik of falsehood and

malice in testifying against them, and assign as a cause for the proceeding the fact that they accompanied the police darogah in his search after an attempt to seize him, while a fugitive from the bar of justice. They likewise decline to call the witnesses named on their behalf.

From the evidence adduced on the trial, I have no doubt of the guilt of the prisoners, and convicting them of the charge brought against them in all its counts, recommend that they be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The statements of the approvers, as contained in their original detailed confessions, were recorded with such precautions as to preclude the possibility of collusion, their evidence on oath, as given at the trial, corresponds in regard to all the prisoners except Ramjaun (No. 15) with those statements, and sufficiently establishes the guilt of the prisoners, none of whom have been engaged in fewer than four dacoities.

The variation in regard to Ramjaun is, that Behari Singh now swears to his having been engaged in the dacoity in the house of Madhubehunder Dutt, although he did not mention him in his original confession, in which however he stated that some were engaged whose names he did not recollect. Ramjaun, however, was named in the confession of Mubarik as connected with this dacoity, and as he is shown, by the statements made by Mubarik and Zameer, both in confession and on oath, to have been engaged in a number of other cases, I see no reason to doubt Behari Singh's subsequent recognition of him. Confirmation of the occurrence of all the dacoities mentioned, with one exception, have been furnished from the records, and two darogahs depose to the notorious bad character of all the prisoners.

I concur in the conviction. The sentence of the Court is that the prisoners be transported for life.

1853.

October 15.
Case of
AUZEEMOOOP-
DEEN and
others.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

HOOLASS GOALAH.

PATNA.

1853.

October 15.

Case of
HOOLASS

GOALAH.

Prisoner convicted of highway robbery with wounding and sentenced to ten years' imprisonment in banishment.
Appeal rejected.

CRIME CHARGED.—Highway robbery (with wounding) of property valued rupees 4 and 4 annas.

CRIME ESTABLISHED.—Highway robbery (with wounding) of property valued rupees 4 and 4 annas.

Committing Officer—Mr. F. A. Vincent, deputy magistrate of Barh, Patna.

Tried before Mr. B. J. Colvin, officiating commissioner with powers of a sessions judge, Patna, on the 20th June 1853.

Remarks by the officiating commissioner.—The prosecution, as first entered in the calendar, was said to be on the part of Nunkoo Opudhia and Government, but finding that he and Shew Suhoye (witness No. 1) were the parties attacked and robbed, and that his evidence was as much required as that of Shew Suhoye, I ordered that Government should be made the sole prosecutor and he a witness.

The following is a statement of the case:—

The above two persons were, on the evening of Saturday the 14th May,* on their way home from a neighboring village, when they were attacked by three foot-pads. Hoolass struck Nunkoo Opudhia a violent blow on the forehead, which felled him to the ground, when he was robbed of his clothes. The robbers then rushed upon Shew Suhoye, who was behind Nunkoo. He fled, but in his flight fell and was robbed of articles of clothing also. On getting up he shouted and attracted the attention of Dooloo Chowkeedar (witness No. 3) and others, who pursued the robbers and seized Hoolass with one piece of Nunkoo's clothing, which is recognized by him and his witnesses as his. The other two escaped and it was not known who they were, till Mohun Chowkeedar, on seeing Hoolas after seizure, named Mothee as having been in his company with another (Boodhun) not apprehended. Mothee was seized ten days afterwards, and was immediately recognized by the two parties robbed. There was also the evidence of witnesses Nos. 11 and 13, (*viz.*,) Sookun Pase'e and Duleep Singh, to prove that he had been in company with Hoolass previous to the robbery.

* *N. B.*—The witness No. 1 said it was Saturday the 20th Bysakh, but Saturday 14th May was the 21st Bysakh : all agree it was on a Saturday.

I considered the case to be quite proved against both the prisoners, while the law officer only convicted Hoolass on a *futwa* of *akoobut* and released Mothee *

Hoolass having struck the severe blow upon the head of Nunkoo Opudhia, from which he was some days in hospital, and the mark of which he still bears, and as he (Hoolass) was formerly, on a conviction of cattle-stealing, sentenced to two years' imprisonment under the name of Hemut, which he allows to have been an *alias*, I have sentenced him to ten (10) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner Hoolass was apprehended just after the highway robbery and close to the spot where it was committed. Some clothing, belonging to the prosecutor, of which he had been robbed, was found on him, and he was recognized as the man who felled the prosecutor by a blow on the head with a club. The proof is clear and conclusive against him, and he has urged nothing in his appeal. I see no reason, therefore, to interfere with the sentence passed upon him by the officiating commissioner.

* Subsequently released by the Nizamut Adawlut's sentence, dated 16th July 1853.

1853.

October 15.
Case of
HOOLASS
GOALAH.

PRESENT:
J. DUNBAR, Esq., Judge.

DOOLEE AND GOVERNMENT

versus

TONULLAH RAREE (No. 1) AND TORAP RAREE
(No. 2.)

TIPPERAH.

—
1853.

October 15.

Case of
TONULLAH
RAREE and
another.

One prisoner,
convicted
of culpable
homicide, sen-
tenced to three
years' impri-
sonment; an-
other prisoner,
convicted of
aiding and
abetting in the
homicide, sen-
tenced to one
year's impri-
sonment. Ap-
peal rejected.

CRIME CHARGED.—1st count, culpable homicide of Meanuddy; 2nd count, assault; and 3rd count, aiding and abetting in the above crime.

CRIME ESTABLISHED.—Prisoner No. 1, culpable homicide of Meanuddy, and prisoner No. 2, aiding and abetting in the above culpable homicide.

Committing Officer—Mr. H. S. Porter, deputy magistrate of Noacolly.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 20th August 1853.

Remarks by the sessions judge.—The deceased had been taken a few days before his death to the zemindary cutcherry by the prisoner's zemindary peons, in order that a dispute between him and a neighbour might be adjusted. Subsequently they demanded their *tullubana*, and on his refusing to pay it, insisted on again taking him to the cutcherry. He resisted, and the prisoner Torap Raree dragged him along, while the prisoner Tonullah struck, or rather pushed at him with a *lattee*. The neighbours interfering, the prisoners ran away, leaving the deceased insensible on the ground. On the fourth day after this occurrence he expired.

The prisoners pleaded *not guilty*.

The facts stated above were satisfactorily elicited from the witnesses for the prosecution and were supported by the confessions of the prisoners in the mofussil and before the joint magistrate.

The body was too far advanced in decomposition to admit of an autopsy.

The Mahomedan law officer convicted the prisoners, in which finding I concurred. There was no intention to kill, or apparently to inflict any serious bodily injury, but at the same time there can be no doubt that death was the consequence of one or both of the two blows inflicted by the prisoner Tonullah. He appears to have thrust at the deceased with his *lattee*, while Torap endeavored to drag him on, and I am of opinion that the thrusts, or one of them, must have caused rupture of some internal organ. But, as I have before remarked, I do not think that such a result

was intended or anticipated, and I therefore sentenced the prisoner as shown in column 12.

Sentence passed by the lower court.—Prisoner No. 1 to be imprisoned without irons for three (3) years and to pay a fine of rupees 100, on or before the 10th September next, or in default of payment to labor until the fine be paid or the term of sentence expire ; and prisoner No. 2 to be imprisoned without irons for one (1) year and to pay a fine of rupees 25 on or before the 10th September next, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence fully establishes the guilt of the prisoners, who, I think, have no just reason to complain of the punishment awarded.

The sentence is confirmed.

1853.

October 15.
Case of
TONULLAU
RARRE and
another.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MUSST. BISNEE
versus
DOOLEL.

CRIME CHARGED.—Wounding with intent to murder Musst. Bisnee, the wife of prisoner.

CRIME ESTABLISHED.—Wounding with intent to murder Musst. Bisnee, the wife of prisoner.

Committing Officer.—Mr. H. Doveton, deputy magistrate of Mudehporeh, zillah Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 22nd June 1853.

Remarks by the sessions judge.—Prisoner pleads guilty of the wounding, but denies the intent to kill.

Prosecutrix is the prisoner's wife by *neka*. She looks older than prisoner, who does not appear more than 22 to 25, though they themselves represent their ages, his as 30, hers as 25. Prosecutrix states, that on the night in question, she had been out with her child (three years old) to its grand-mother's ; leaving it there, she returned straight home, and going in was rated by her husband ; on her answering him, he set on her with a knife (produced in court) and wounded her severely on the face, neck, hands and foot.

The knife is a long, wooden-handled, pointed, rough-edged, but not sharp instrument, very murderous in appearance.

It seems (darogah's report of the 15th of April) that the prisoner was the first to give notice of his wife's state at the

BHAUGUL-
PORE.
1853.

October 15.
Case of
DOOLEL.
Prisoner con-
victed of
wounding with
intent to mur-
der his wife,
sentenced to
ten years' im-
prisonment
Appeal reject-
ed.

1853.

October 15.
Case of
DOOLEL.

thannah, but he there imputed the wounding to some one who had attacked her on the road. On the darogah's coming to the spot and receiving the woman's deposition, the prisoner confessed that on his wife's coming home late at night and not lying down with him, he suspected her of intriguing with some other man, and therefore wounded her with the knife. The witnesses Dookha (No. 2) and Ounial (No. 10), who went to prosecutrix shortly after she was wounded, and speak to her wounded state and prisoner's confession, are father and brother of prisoner; they both give prosecutrix a good character and there seems to have been no previous quarrel.

The witnesses to the *sooruthal* held at the thannah speak to the extent and serious nature of the wounds, especially those in the throat.

Prisoner makes no defence; attributes his crime to fatality; he produces two witnesses, both of whom give him a good general character.

The jury bring in a verdict of *guilty* of wounding with intent to murder, in which I concur. The instrument and the wounds, still very apparent on the throat and face, show a murderous intent at the time of action, and had the knife been sharper, death would most certainly have been the consequence. From the fact, however, of there being no previous quarrel, from prisoner's own account, of the jealous fit that induced his sudden anger, and with reference to prosecutrix's deposition, that he had never before beaten or otherwise ill-used her, I am inclined to take a somewhat more lenient view of the case than would otherwise be justified. I sentence the prisoner Dooler to ten (10) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The conviction is good upon the evidence, and the sentence appears suitable under the circumstances of the case. The prisoner now asserts, that the darogah induced him to confess. This plea was never urged before and is manifestly false, as he made a full confession before the magistrate and pleaded *guilty* on the trial. Sentence confirmed.

PRESENT.

A. J. M. MILLS, Esq., *Officiating Judge.*GOVERNMENT AND MUSST. PAKEEYA, ALIAS
SOLA BEBEE,*versus*SHEIKH SHETABDEE (No. 12,) KURKOOMAREE PE-
SHAGUR (No. 13,) ASSANOOLLAH CHOKEEDAR
(No. 14,) AND SHEIKH ALUM (No. 15.)

CRIME CHARGED.—Prisoner No. 12, 1st count, sale of a girl named Pakeeya *alias* Sola Bebee, aged 10 years, for the purpose of prostitution ; 2nd count, fraudulently causing to be written a bond for the sum of rupees 21 in the name of the said girl. Prisoner No. 13, 1st count, purchasing of a girl named Pakeeya *alias* Sola Bebee, aged 10 years, for the purpose of prostitution ; 2nd count, fraudulently getting a bond for the sum of rupees 21, written on the part of the said girl ; prisoners Nos. 14 and 15, being accomplices in all the charges aforesaid.

CRIME ESTABLISHED.—Prisoner No. 12, selling a girl named Pakeeya *alias* Sola Bebee to Musst. Kurkoomaree, for the purpose of rendering her a prostitute, and of fraudulently attempting to obtain the execution of a bond for rupees 21 as if from the said child. Prisoner No. 13, purchasing a girl named Musst. Pakeeya *alias* Sola Bebee, for the purpose of rendering her a prostitute, and fraudulently attempting to obtain execution of a bond, as if from the said girl, for the sum of rupees 21. Prisoners Nos. 14 and 15 being accomplices in the purchase and sale of a girl named Musst. Pakeeya *alias* Sola Bebee, and in a fraudulent attempt to obtain execution of a bond for rupees 21 as if from the said child.

Committing Officer.—Zeeinooddeen Hossein, deputy magistrate of Manickgunge, zillah Dacca.

Tried before Mr. G. P. Leycester, officiating sessions judge of Dacca, on the 2nd September 1853.

Remarks by the officiating sessions judge.—The first two prisoners are charged with the sale and purchase of a girl, about 10 years of age for the purpose of prostitution ; the other two with being accomplices in the above offence. They were apprehended immediately after the sale of the child was effected, and while they were getting a bond for rupees 21 written out as if from the child in favor of the prisoner Kurkoomaree. When the writer of the bond learnt that the child Pakeeya was to be a party to its execution, he declined to go on with the writing. At this juncture, a police burkundauz, the

DACCA

1853.

October 17.
Case of
SHEIKH
SHETABDEE
and others.

The prisoners were convicted as principals and accomplices in the sale and purchase of a girl aged ten years for the purpose of prostitution. This is a misdemeanour under the Mahrenian law, by which *tazeer* is incurred. Under the particular unaggravated circumstances of the case, the Court reduced the sentence passed by the sessions judge, observing that the magistrate might have disposed of it himself.

1853.

October 17.

Case of
SHRIKH
SHETARDEE
and others.

witness Kafeeloodeen, who had before got scent of what was going on, walked into the house of Sheeboo Shah, where this was transacting, and apprehended the prisoners.

Prisoner No. 12 confessed before the police and magistrate, that he had brought the girl in question from the Rustumpore indigo factory in Furreedpore, by direction of a person in charge of it (whose name is very indistinctly given,) and took her to the village of Kureea, where he sold the child to the prisoner No. 13. The prisoners Nos. 14 and 15 took an active part in assisting at the sale. The former of them purchased the stamp paper on which the endorsement of the bond had been commenced. The evidence at the trial fully proves the above, and in concurrence with the *futwa*, I convict the prisoners of the offence noted in column 10 and sentence prisoner No. 12 to five (5) years' imprisonment with labor; prisoner No. 14 to seven (7) years' imprisonment with labor, in consideration of his being a chowkeedar; prisoner No. 15 to four (4) year's imprisonment without irons and to pay a fine of 100rupees, or in default of payment to labor; prisoner No. 13 to two (2) years' imprisonment: this woman had at one time been evidently the victim of similar villainy.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoners have appealed, urging that they have committed no offence. The prisoners are not charged with kidnapping the child, or taking it by force or fraud out of the lawful custody of its parent or guardian, but merely with the sale and purchase of it for the purposes of prostitution. This crime is not specifically provided for by the regulations, but the Mahomedan law, as declared by the law officer of this Court, makes the sale of a child for immoral purposes a misdemeanor, by which *tazeer* is incurred, and the Court must therefore treat it as such. The child was without a protector of any kind, and the prisoner No. 12 does not appear to have used force or any illegal means in obtaining the child: his statement indeed that it was made over to him by another to sell for that person's benefit is not disproved, nor does the case itself disclose any circumstances of aggravation, which distinguish other cases of this nature as published in the Nizamut Reports. There is no doubt that the child was sold and bought for purposes of prostitution, and the proof is complete against the prisoners, but the punishment awarded is, with reference to the nature of the offence, as above stated, excessive. The magistrate should have disposed of the case himself, under Section XIX. Regulation IX. of 1807, unless he considered the penalty provided by that law insufficient for the criminality of the offence. In my judgment it is fully sufficient. In reduction

therefore of the punishment inflicted by the sessions judge, I sentence Nos. 12 and 14 to six (6) months' imprisonment and prisoners Nos. 13 and 15, to three (3) months' imprisonment each, and severally to pay a fine of rupees 20, or in default of payment to labor until the fine be paid or the term of sentence expire.

1853.

October 17.
Case of
SHEIKH
SHETABDEE
and others.

PRESENT:
A. J. M. MILLS Esq., Officiating Judge.

**GOVERNMENT AND SREEMUTTEE KUMLEE
versus**

**TRIAL No. 1.—MUSST. NUBUNGEET (No. 4.)
TRIAL No. 2.—DHUNNOO SOMREE (No. 1.) AND
CHINTAMONEE MUNDUL (No. 2.)**

CRIME CHARGED.—*Trial No. 1.* Wilful murder, in having struck with a club of wood on the head of Cooroo Soonree, the father of the prosecutrix Kumlee, from the effects of which he expired on the 11th August 1853.

MIDNAPORE.

Trial No. 2.—Wilful murder, in having so struck Cooroo Soonree, the father of the prosecutrix Kumlee, on the head, with a piece of wood, that he then and there died from the effects of the said beating; 2nd count, with aiding and abetting in the above after the fact; and 3rd count, with privity to the above after the fact.

Committing Officer—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 17th September 1853.

1853.

October 17.
Case of
MUSST.
NUBUNGEET
and others.

Three prisoners convicted as accomplices in wilful murder and sentenced, the two men to transportation for life and the woman to imprisonment for life.

Remarks by the sessions judge.—This case came on for trial on the 1st September, but was remanded to the magistrate under the provisions of the Circular Order No. 70, dated 14th November 1851, a tender of pardon having been made to some of the parties accused without regard to Clause 4 Section III. Regulation X. 1824.* The magistrate on a re-consideration of the case, very properly relinquished his intention of making any of the accused king's evidence and committed them to take their trial, the result of which forms the subject of this report. The prosecutrix deposes, that in the "month of Sawun last, she accompanied her deceased father, Cooroo Soonree," on a visit to one Goluck Mundul, (the husband of the prisoner Nubungee and father of the prisoners Dhunnoo and Chintamonee,) to make arrangements for the transfer of a liquor shop, which Goluck Mundul

* See Section VII. Regulation I. of 1829.

1853.

October 17.

Case of
MUSST.
NUBUNGEE
and others.

proposed to make over to the deceased ; that on the 1st August, about 3 P.M., she went into the village, leaving her father in company with the three prisoners. On her return shortly after, she found the house empty, and in the room where she had last seen her father, a cloth and a stick, that belonged to him, lying on the floor. After an ineffectual search, she went to the mundul of the village, the witness Gorachand, and told him that her father had disappeared and that she could gather no traces of him. She then returned to Goluck Mundul's house and went to sleep ; that in the middle of the night she woke up and found the prisoners with their clothes wet talking with the village police, Khooroo Digwar, Huree Paik and others, who however would not permit her to hear what they were saying ; and that in the morning she was taken to the thannah to give her deposition. The witness Gorachand Mundul corroborates this statement, and deposes that on making inquiry, he learnt from Modhoo Soonree (witness No. 14,) that he had seen the feet of a corpse covered over with some wood in a yard, north of the prisoner's house, and his brother, the witness Deenbundhoo Soonree (No. 13) had also told him that he saw the prisoner Nubungee on that day dragging along the body of a man, near the same spot, upon which he (Gorachand) and the witnesses Nos. 3 and 5 proceeded to Goluck Mundul's house and found that the three prisoners were absent. The former kept watch, and about 12 o'clock at night the prisoners returned. On being questioned whence they had come and why their clothes were wet, they at first gave an evasive answer, but immediately after admitted that the prisoner "Nubungee" had killed the deceased, and that all three had assisted in carrying the body down to the *nullah* and in throwing it into the water. This testimony is corroborated in every particular by the evidence of the witnesses above noted. The inquest held in the mofussil proves that the body of Cooro Soonree was found in a *nullah* about a mile distant from the prisoner's house, with the skull fractured and other marks of violence about, the head, and the civil assistant surgeon, who examined the corpse after its arrival at the sudder station, is of opinion that death was caused by a fracture of the skull extending from the ear to the vertebra of the neck, and must have been instantaneous; he is also of opinion, that it (the fracture) was produced by a violent blow of some blunt weapon, such as that in court, a *moogder* weighing about a seer, a foot in length, with one extremity cut away as a handle. The prisoner Musst. Nubungee confessed in the mofussil before the magistrate and in this court. She states in these confessions that the deceased was a guest in her house ; that on the 11th August,

whilst all the family were absent and she and deceased were alone, he made indecent proposals to her; that in spite of her remonstrances he endeavoured to carry them into effect, when she struck him on the head with her bracelet, and finding that was of no avail, she seized hold of the *moogder* and struck him a blow that killed him on the spot; that on her sons returning home she told them what had occurred, when they assisted her in carrying away the body to the *nullah* where it was found.

The prisoner Dhunnoo Mundul, before the darogah and magistrate, confessed to having aided in carrying the corpse to the *nullah* and in throwing it into the water. In this court he pleads *not guilty* and sets up an *alibi*. The prisoner Chintamonee also denies his guilt and offers the same plea in defence. In the mofussil and before the magistrate he confessed to having proceeded a part of the way only towards the *nullah* with the body and then returned, but this is contradicted by the circumstantial evidence.*

It is impossible, I think, both morally and physically, that the confessions of Musst. Nubungee can be *entirely* true. From every appearance, she is fifty-five or sixty years of age, her gait is infirm, her flesh shrivelled, and her person altogether so little attractive as to render it highly improbable that the deceased would have ever thought of taking the liberties which she says he attempted. The other two prisoners are her sons, and the eldest, Dhunnoo Mundul, is at least 30 years of age. It is likewise equally beyond probability, with the muscular power the prisoner possesses, she could have inflicted such a blow on the deceased's head as would cause the fracture the medical officer describes. Setting aside altogether the facts of the position of the blow which produced the fracture, *viz.*, on the *back* of the head, and of the deceased's being a *hale*, tall, powerful man, capable of successfully resisting any attack the female prisoner could possibly have made upon him, my belief is, that the prisoners, being dissatisfied with the arrangements by which the liquor shop was to be transferred to the deceased and to prevent their accomplishment, combined to make away with the deceased; that one or both of the male prisoners actually committed the assault, and that the female prisoner has taken on herself the entire responsibility of the murder to save her sons the penalty that would otherwise attach to them. Be that as it may, there is no trustworthy evidence of how and by whom the murder

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* The *soruthal* states that there were foot-marks of three persons on the banks of the *nullah*, in which the body was found, and the witnesses swear that the clothes of the three prisoners, when they returned home at night, were wet.

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was committed, except the confessions, and by them the sentence must be guided.

The assessors declare the prisoner Musst. Nubungee guilty, on her own confession, of the murder of Cooro Soornree; and the prisoners Dhunnoo Soornree Mundul and Chintamonee Mundul guilty as accessories after the fact.

I concur in this verdict, but under the circumstances above stated, I would not recommend that an irrevocable sentence be passed on the female prisoner, but that she be imprisoned for life, with labor suited to her sex, and that the prisoner Dhunnoo Soornree and Chintamonee Mundul be sentenced to fourteen (14) years' imprisonment each, with labor and irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The sessions judge is of opinion that it is impossible to believe, both morally and physically that the confession of Musst. Nubungee can be entirely true, and gives very powerful reasons, which I see no grounds to question, for coming to this conclusion. I therefore reject that part of her confession which charges herself with committing the murder alone and unaided, to resent an insult offered to herself by the deceased. Entertaining this view, I cannot give credit to the admissions of the other prisoners, which limit the part they took in the murder to accessoryship after the fact in wilfully concealing the body of the deceased, knowing that a murder had been committed. It appears to me, that the facts sworn to, independant of the confessions, are inconsistent with any other rational conclusion than that the prisoners were more or less concerned in murdering the deceased. It is in evidence, that the deceased went to the house of the prisoners; that he was left about 3 p.m. in their company; that shortly after the house was found empty, a cloth and stick belonging to the deceased lying on the floor; that search was ineffectually made for the deceased and the prisoners; that the house was watched; that at about 12 o'clock at night they were apprehended on their return home with their clothes wet; that they admitted the fact of the deceased having been murdered, the female prisoner taking on herself the responsibility; and that they had all assisted in carrying the body and throwing it into the water. The witness (No. 14) also swears that he saw the feet of a corpse covered over with some wood in a ditch, north of the prisoner's house. These facts, taken with the marks of violence on the head of the deceased, the physical impossibility of the prisoner Nubungee, inflicting such injuries, and the improbability of the deceased taking indecent liberties with a person of her age and appearance, force upon the mind a conviction that the three prisoners aided and abetted each other in killing

the deceased. How and by whom the fatal blows were struck, and what was the impelling motive to the crime, it is impossible to say. I convict the prisoners of being accomplices in the murder, and, under all the circumstances of the case, sentence them to be imprisoned for life, with labor and irons; and as regards the two male prisoners, Dhunnoo Soonree and Chintamonce Mundul, in transportation.

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Case of
**MUSST.
NUBUNGEZ.**

PRESENT :
J. DUNBAR, Esq., *Judge.*

REHMUT ALEE

versus

BYJOO RAI (No. 1,) BEESEE KAIIAR (No. 2,) SITAR ALEE (No. 3 APPELLANT,) AND JOOTEE RAI (No. 4 APPELLANT.)

CRIME CHARGED.—1st count, wilful murder of Kadir Buksh, deceased, and 2nd count, Nos. 3 and 4, accomplices in the same.

CRIME ESTABLISHED.—Prisoners Nos. 1 and 2, culpable homicide of Kadir Buksh, deceased, and Nos. 3 and 4, accomplices in the above crime.

Committing Officer—Mr. F. Tucker, magistrate of Tirhoot. Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 26th May 1853.

Remarks by the sessions judge.—The prosecutor deposed, that two persons, by name Bakus and Torab Alee, having grazed their cattle on the oat-field of the deceased, a complaint to that effect had been preferred by the latter to the prisoner Sitar Alee (No. 3,) gomashta of Eshreepersaud, malik of an eight-anna share, and to the prisoner Jootee Rai (No. 4,) gomashta of Ramjewun Lal, malik of the other eight annas of mouza Paharpore, four days before the date of the occurrence which led to this trial, which was Friday the 22nd April last or 28th Cheyt 1260 F. S., and the prisoners told him to appoint a *punchayet* and settle the business. On the above date accordingly the two gomashtas (prisoners Nos. 3 and 4) came to a tope in Paharpore, and a *punchayet* having been appointed (all of whom were sent up as witnesses,) the members of which having decided that no blame attached to Bakus and Torab Alee, told the two gomashtas that the deceased Kadir Buksh was in fault, and that they might punish him as they thought proper. On this the prisoners Nos. 3 and 4 ordered the deceased to pay a fine of rupees 2. on which the latter objected on the score of poverty and inability, promising, however, that if any

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Two prisoners, convicted as principals in culpable homicide, sentenced to five years' imprisonment, and two other prisoners convicted as accomplices sentenced to three years' imprisonment.

Appeal rejected.

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and others.

mahajun would advance him the money; he would pay it. Upon this the prisoners Nos. 3 and 4 ordered the prisoners Nos. 1 and 2, who had come with them, to tie the deceased's hands behind his back, and give him twenty blows with a shoe, in obedience to which order the prisoners Nos. 1 and 2 having taken off the deceased's turban, tied his hands behind his back and gave him twenty blows with a shoe on the back of the neck and head. Seeing this the prosecutor called out *dohae*, on which the two gomashtas (Nos. 3 and 4) ordered prisoners Nos. 1 and 2 to beat him, hearing which, however, the latter decamped to a tope in mouza Chutrowbee. The deceased, part of whose binding was loose, proceeded in the direction of the thannah, but had not got far when the prisoners Nos. 1 and 2 followed and stopped him by order of the two gomashtas, took him back, and beating him and dragging him along and poking him with their *lattees*, brought him under a sacred *peepul* tree, where the deceased became senseless, and the four prisoners took to flight. After this the prosecutor's brother Hidda called the prosecutor, who came, and having placed his father on a *charpoy* set out with him for Mozufferporc the same day. They had not however proceeded above a couple of miles, when night overtaking them, the prosecutor took his father back home, and on the following morning (Saturday,) himself gave information at the thannah. The deceased expired very early the same morning.

Out of six persons adduced as eye-witnesses, three deposed to hearing the giving of the order by the prisoner Jootee Rai to the prisoners Byjoo Rai and Beesee Kahar, first to beat the deceased with a shoe and to bind him, and for the second time to seize the deceased, one of the three others, only deposing to hearing the prisoner Jootee Rai order the prisoners Byjoo Rai and Beesee Kahar to beat the deceased with a shoe, of which the other two remaining witnesses said they had been informed by the by-standers.

Out of the above six eye-witnesses, one deposed to having heard the prisoner Sitar Alee give an order for beating the deceased with a shoe and also for the second seizure of the deceased, two others stating that they had heard from others of that prisoner having given such an order, while two more only deposed that the prisoner Sitar Alee was sitting by at the time.

Two out of the same six witnesses also deposed to seeing the prisoners Byjoo Rai and Beesee Kahar beat the deceased with a shoe and tie his hands behind his back with his (deceased's) turban, a third stating that the prisoner Byjoo Rai first bound the deceased, and the prisoner Beesee Kahar beat him with a shoe, and also the dragging back by those prisoners of the deceased the second time and thrusting at him

with *lattees*, the remaining three witnesses stating that they only saw the prisoner Beesee Kahar beat the deceased with a shoe.

Dr. R. B. Kinsey, the medical officer, who examined the body of the deceased, deposed in this court, that he "found that death had ensued from congestion of the brain, the result of a beating about the head, neck and back. There was a mark on the chest, a contusion apparently from a *lattee* blow. The lungs were also in a state of great congestion and the heart full of blood. There were no marks about the head, but from the above appearances, it is evident that the man died struggling for breath, in consequence of exhaustion of all nervous energy, resulting from great efforts to free himself."

All the prisoners pleaded *not guilty* both in the foudaree and in this court, the prisoner Byjoo Rai admitting that he did, and the prisoner Beesee Kahar denying having gone to the spot; the prisoners Sitar Aleem and Jootee Rai also allowed that they had gone to where the *punchayet* was sitting to collect the rents, and all four attempted to establish that they were not present at the time of the occurrence, which however was not proved.

The law officer in his *futwa*, convicting the prisoners Nos. 1 and 2 of the culpable homicide of the deceased, and the prisoners Nos. 3 and 4 of being accomplices, declares the two former liable to punishment for the *deyut* or price of blood, and the two latter to discretionary punishment by *tazeer*. In this finding I concurred, and the prisoners have been sentenced to different periods of imprisonment stated in the foregoing columns.

Sentence passed by the lower court.—Prisoners Nos. 1 and 2 imprisonment with labor and irons, for five (5) years; prisoners, Nos. 3 and 4, each, imprisonment without irons for three years, and a fine of Company's rupees 100, or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoners Nos. 3 and 4 only have appealed. They merely object generally to the proceedings against them and pray for justice. The evidence upon which they have been convicted is full and clear. I see no reason to interfere and therefore confirm the sentence.

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Case of
SITAR ALEE
and others.

PRESENT :
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND KANGALEE BEWAH
versus
MAGHOO SHEIKH.

NUDDEA.

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Case of
MAGHOO

SHEIKH.

Prisoner convicted of culpable homicide and sentenced to seven years' imprisonment. Labor in such a case is not commutable by a fine.

CRIME CHARGED.—Wilful murder of Manik Sheikh.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. G. Hewett, deputy magistrate at Cutwa.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 26th July 1853.

Remarks by the sessions judge.—The evidence recorded on this trial proved the following facts :—The prisoner and his wife always disagreed, and on account of his mal-treatment, she very often went to her uncle's house, where her mother, a widow, lived. A few days before the catastrophe, which is the subject of this trial, the prisoner went to the house of the deceased and endeavoured to persuade her to return home. She made some excuse for not returning with him, and her mother induced him to allow her to remain with her a few days longer. The prisoner consented, though unwillingly, and after the expiration of a few days, he called again for his wife, bringing a few friends with him. He again required her to accompany him, when she endeavoured to obtain a fresh respite for a few more days, but he was deaf to her entreaties and insisted on her immediate return. There was, in consequence, much wailing and lamentation on her and her mother's part, but notwithstanding her nolition, she was obliged to go.

The uncle (the deceased) was from home, but on hearing on his arrival, soon after her departure, what had occurred, he followed the party for about a mile, and on overtaking it, he entreated the prisoner to allow his niece to return with him, and after ten days he would himself convey her to him.

The prisoner became very angry, and in his irritation struck him a blow with a stick he had in his hand on his head and another on his shoulder. The deceased fell insensible and remained in that state till he died, two hours after. The stick with which the blow was given, which caused death, according to the evidence of the sub-assistant surgeon stationed at Cutwa, by compression of the brain, has not been found, but by the evidence of Madhub Ghose, who was bathing close to the place, where the crime was committed, and of Nasir Sheikh, who was employed in cultivation near the place, there is no doubt a heavy one was used to inflict the injury which was the cause

of death. The *futwa* of the law officer of the court convicted the prisoner, on violent presumption, of the crime of culpable homicide and declared him liable to *deyut*.

The prisoner stated in his defence that he had discarded Musst. Goonoo, who was his second wife (he having married her by *nikah* solely because his first wife, who is still living, had borne him no children,) because he was informed that during his occasional absence from home, she was incontinent. He pleaded being at his home on the day and at the hour he was charged with the "wilful murder," his house being three *coss* distant from where the crime was said to have been committed. He called four witnesses to prove his defence, but they failed to do so.

Sentence passed by the lower court.—Seven (7) years' imprisonment without irons, and to pay a fine of rupees 50 within a month, in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The conviction of the prisoner is fully justified by the evidence against him. Several witnesses saw him commit the act, and the blow he inflicted caused death in a couple of hours. He defends himself on the ground of *alibi*, but has failed altogether in proof of the plea.

The sessions judge's sentence of seven (7) years' imprisonment without irons, and to labor in default of payment of rupees 50 fine, is illegal, (*see Section 3 Regulation II. of 1834*) : it must therefore be reversed. The prisoner is sentenced to seven (7) years' imprisonment with labor from 26th July 1853.

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Case of
MAGHOO
SHEIKH.

PRESENT:
H. T. RAIKES, Esq., *Officiating Judge.*

FOLOO KOORMIN

versus

GUNDHURPA (No. 1,) LALEE (No. 2,) JEEBNA (No. 3,) FOWDA (No. 4,) MOHUNNA (No. 5,) SHANKEA (No. 6,) MONEEA (No. 7,) LADA (No. 8,) BOSTEERAM (No. 9,) AND DOOKNA (No. 11.)

HAZAREE-
BAUGH.

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Case of
GUNDHURPA
and others.

Prisoners
convicted of
burglary at-
tended with
murder sen-
tenced to
transportation
for life.

CRIME CHARGED.—Prisoner No. 1, 1st count, burglary in the house of the prosecutor and carrying away therefrom property amounting to rupees 2-1-9, and 2nd count, wilful murder of the husband of prosecutrix while on the commission of the said burglary, and prisoner No. 2, accessory before and after the fact in the above case, and prisoners Nos. 3 to 11, accomplices in the above burglary attended with murder.

Committing Officer—Koomar Harcudra Krishna, deputy magistrate of Govindpore, sub-division in Manbhoom.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 26th August 1853.

Remarks by the deputy commissioner.—The prosecutrix states, that one night in Phagoon, she and her husband were sleeping in their house, and towards morning were disturbed by some noise made by a thief in the house. Her husband then went outside and was immediately wounded with an arrow and fell down. Prosecutrix heard him groan and went to his assistance. He told her that Jeebna had wounded him with an arrow. Information was sent to the police, and shortly afterwards her husband died. She told the police that the watchman knew whom her husband had named. She learnt it afterwards. Nothing was taken out of the house; the wall was broken through, so that a man could pass.

The prisoners all plead *not guilty*.

No. 1, witness Gundha Mahto, (senior), proves the confession of the prisoner Dookna before the police officer; proves also the record of the inquest.

No. 2 witness Mohun Mahto,

” 3 ” Atmaram Mahto,

” 4 ” Gonesh Koormee (junior,) } sons of the pri-

” 5 ” Jecaram Koormee, } soners Gundhurpa,

” 6 ” Lala Vat, } Fowda and Mohun-
na before the police officers. The witness Jecaram further proves that the prisoner Lalee Vat gave up a broken brass vessel, and the prisoner Lada Vat a bow and arrows from the jungle.

No (6.) witness Gaj Singh, } Prove the confession of the pri-

” 7 ” Sibsunkur, } soner Lalee Vat before the police

” 8 ” Amrit Singh, } officers.

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No. 9, witness Mooroo Mahto, proves the confession of the prisoner Jeebna before the police officers. Witness, on the night of the murder, heard the prosecutrix make outcry, and witness then went to her house and found the deceased Hureenath with an arrow in his breast. He partly drew it out himself and it was then extracted by Balee Digwar. Hureenath told Balee Digwar that he had recognized some one like Jeebna, and shortly after this Hureenath died. The Amalkuri station is half a bow shot distant from his house. This is the arrow with which deceased was wounded. Witness was not before acquainted with the prisoner Jeebna. Hureenath named Jeebna of Mudhoodchee; witness does not know who apprehended this prisoner. His confession was taken at Amalkuri and was made voluntarily.

No. 10 witness Atmaram,) These prove the confessions
" 11 " Bolee Moodee, } of the prisoners Shankea and
" 12 " Mungoo Jola, } Moneea before the police officers. The witness Mangoo also proves the confession of the prisoner Bostiram. No. 13, witness Chootorea Koormec, proves the confession of the prisoner Lada Vat before the police officers.

No. 14 witness Denaram,) Prove the confes-
" 15 " Gonesh Mahto (senior,) } sions of the prisoner
Lada, also that a ladle was found in the house of the prisoner Bostecram.

No. 16, witness Poresh Mahto, proves the confession of the prisoner Dookna. States further, that one night in By-sakh he heard an alarm and went and saw that Hureenath had been wounded with an arrow. He then said that he had recognized Jeebna, Jola and Fowda Bhoya. Witness did not give information of this anywhere; yes, he did to the Panra Ranee; did not then mention Jeebna's name. His information was not recorded. He named both Jeebna and Fowda to the deputy magistrate. He did not say before that officer that he could not remember. These things now in court, a hoe and axe, a small vessel and a ladle, belong to the prosecutrix.

No. 17 witness Dassoruth,) These prove the con-
" 18 " Gooroochurn, } fessions of the prisoners
" 19 " Roop Koomar, } Nos. 2 * to 11 inclusive,
" 20 " Amrit Modee, } before the deputy magis-
" 21 " Vageenath Koomar, } trate.

The confession of the prisoner Gundhurpa before the police is to the effect that the prisoner Lada Vat incited him and others to commit the robbery, and that he accordingly

* Prisoner No. 10 died before the trial.

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went with them to the house of the deceased, and when deceased came out, Lada Vat told prisoner to discharge an arrow at him. Prisoner therefore took a bow and arrow from the prisoner Lada and therewith shot at and wounded the deceased Hureenath. Then they all decamped, taking with them some articles of property and some grain.

The confession of the prisoner Lalee is to the effect that he was persuaded by the prisoner Jeebna and others to join in the robbery. He went, but staid outside the house, while others made burglarious entry. When Hureenath came out, they all fled, and the prisoner Gundhurpa then said that the deceased was about to seize him, but that he had wounded the deceased with an arrow, whereat all were much concerned and came away lamenting.

The confession of the prisoner Jeebna is to the effect that the prisoner Lalee Vat and others, half by threats and half by persuasion, induced him to join in the robbery. He was unwilling to do so, having been twice convicted before. When Hureenath raised a cry of "thieves," Gundhurpa took Lada's bow and shot at and wounded Hureenath. Then all went to their several homes.

The confessions of the prisoner Fowda is, that he was induced by Lalce Vat and others to join in the robbery. It was Gundhurpa who wounded Hureenath.

The confessions of the prisoners Mohunna, Shankea and Moneea are to the same purport as that of the prisoner Fowda.

The confession of the prisoner Lada is to the effect that the prisoner Lalee Vat brought him on pretence of going to see a festival, and then, having gathered others, compelled the prisoner, under fear of his life, to join in the robbery. Gundhurpa took prisoner's bow and arrows. Prisoner sat at some distance, while the others robbed the house, and prisoner heard an alarm given and a sound of groaning. Was told that Gundhurpa had wounded the owner of the house. Prisoner was greatly concerned, but Lalee and Gundhurpa made light of it and said it was well done and that no harm would follow.

The confession of the prisoner Bosteeram is to the effect, that he and his son, the prisoner Shankea, were induced by the prisoner Lalee Vat to join in the robbery. It was Gundhurpa who wounded the deceased.

The confession of the prisoner Dookna is to the effect that he joined in the robbery at the instigation of the prisoners Lalee Vat and Jeebna. It was Gundhurpa who wounded the deceased.

The confessions of the prisoners Nos. 2 to 9 inclusive, and of the prisoner No. 11, taken before the deputy magistrate,

are, with some variations of detail, substantially the same as those made by them before the police officers.

No. 23, witness Nimchand Mahto, proves that in the house of the prisoner Lalee a broken brass vessel, and in that of the prisoner Lada a bow and arrows, were found.

No. 24, witness Boli Ghatwal, states that on the night of the 29th Bysakh, while going his rounds at the Amalkuri police station, he heard an uproar at Jormadihi, and thereupon he and Bhotoo Chowkeedar ran together to the place and were told by Guanda Mahto that Hureenath had been wounded with an arrow by thieves. Witness went to Hureenath, who said that he had been wounded by thieves. An arrow was sticking in his breast, he was trying to draw it out, and was groaning. He said that he had recognized Jeebna, and that he thought one of the thieves was like Fowda. Witness then drew out the arrow and shortly afterwards Hureenath died. When the darogah came, witness told him that the deceased had named Jeebna and Fowda, and on this information all the prisoners were traced out and apprehended. Jeebna confessed and gave up a hoe; Fowda Singh produced a house-breaker's tool; Lalee gave up a broken brass vessel from the jungle; Lada gave up a bow and arrows from the jungle; and Bostiram an iron ladle from his house. Witness did name Fowda to the darogah, who may not have recorded it. Witness does not remember whether he named him before the deputy magistrate. Witness was present when Jeebna and Lada and Fowda and Dookna were apprehended, but was not present when they confessed before the police. The property given up was produced at the time of their apprehension. No. 25 witness Bhotoo Chowkeedar, heard the alarm, and went with Bolee to Hureenath's house and found Hureenath lying wounded. Witness immediately went to give information to the police. He left Hureenath still living. Witness said exactly this to the deputy magistrate. No. 26, witness Shamdhoo Koormee, saw the prisoner Fowda give up a house-breaker's tool.

The prisoner Gundhurpa in his defence says that he was not concerned in the robbery and murder. His confession before the police was extorted by beating; he did not confess before the deputy magistrate. The raja took a fine from him because he kept a woman; the raja has pulled down his house and is always asking for money, so has a spite against him. He was beaten at night, and has no witnesses.

The prisoner Lalee in his defence states, that the Toondee Raja's people have got up this charge through enmity towards him, and that his confession before the police was extorted by beating. The darogah told him to confess

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before the deputy magistrate, which he did. Has no evidence of ill-treatment.

The prisoner Jeebna in his defence says, that his confession before the police was extorted.

The prisoner Fowda in his defence says, that his confession before the police was extorted.

The prisoner Mohunna in his defence says, that his confession before the police was extorted.

The prisoner Shanketa in his defence says, that he and his father were both beaten and their confession extorted.

The prisoner Moneen in his defence says, that his confession was extorted. He was in Jeeblal's granary on the night of the murder.

The prisoner Lada in his defence says, that he was with the prisoner Lalee under a tree, and did not commit any robbery. His confession was extorted.

The prisoner Bosteeram in his defence says, that his confession was extorted, and that the ladle found in his house is his own.

The prisoner Dookna in his defence says, that his confession was extorted, as is known to Nirimjan and Boora.

No. 27, witness Gungoora, for prisoner No. 1, knows nothing in the prisoner's defence. Was present, when he confessed voluntarily.

No. 28, witness Nowab Singh } For prisoner No. 1, know
" 29 " Woojil Khaos, } nothing.

No. 30, witness Mohur Saw, } For prisoner No. 2, know
" 31 " Gunga Saw, } nothing.

No. 32, witness Mungul Singh, } For the prisoner No. 7,
" 33 " Moneeram, } do not know that prisoner,
slept in Jeeblal's granary.

No. 34 witness Khosal Singh, } For the prisoner No. 11,
" 35 " Nirimjan, } give the prisoner a good
" 36 " Boora, } character.

The jury, whose names and occupations are entered below, * find all the prisoners guilty as charged.

In this verdict I concur. That the prisoner Jeebna was named by the deceased Hureenath is established by the evidence of the witnesses Nos. 9, 16 and 24, and is further confirmed by the voluntary confession of the prisoner Jeebna. In this way a clue was obtained, and the prisoners Nos. 2 to 9 inclusive, and No. 11, have made repeated confessions of having been concerned in the offence charged. These confessions I hold to be conclusive against the said prisoners. Against the prisoner No. 1, there is only his confession before the

* Gungmohun Chodree, Mooktar; and Isserchunder Sircar, ditto.

police officers, but this is well attested, and even a witness summoned for the defence has affirmed that the prisoner's confession was voluntary : I therefore hold it to be conclusive against the prisoner. The production of some trifling articles of property by some of the prisoners serves to confirm their individual confessions, but certainly I attach no great weight to this circumstance. The conviction of the prisoners in my mind rests on their confessions only. Taking these confessions for true, they disclose a remarkable state of society : men who are apparently not habitually banded together, will, on the least instigation, join in a robbery or a dacoity. It is to this very circumstance that I attribute the frequency of confessions. The want of mutual confidence renders each willing to inculpate the other, while he weakly exculpates himself. According to the confessions, most of these prisoners stayed outside the house ; each has some sort of excuse.

Were there any better evidence against the prisoner Gundhurpa, I should not hesitate to recommend a capital sentence, but as the case stands, I consider that a capital sentence should not issue. I do not see that any distinction need be made between his act and that of any other member of the gang. I find them one and all guilty of being accomplices in burglary with murder, and recommend that they be severely sentenced to imprisonment for life with hard labor in irons in transportation.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—All the prisoners, except Gundhurpa (No. 1,) confessed before the police and again before the deputy magistrate, that they were engaged in the robbery and that the prosecutrix's husband was shot by Gundhurpa with an arrow outside the house. Gundhurpa alone, though confessing before the police, withdrew that confession when brought before the deputy magistrate and alleged that he had made it only to save himself from continued ill-treatment. There is, however, no proof whatever of such ill-treatment, and though the confessions of the other prisoners cannot be used against him as proof of his guilt, they may, in the absence of any thing justifying the presumption that his confession was extorted, be taken as confirmatory of its truth and in support of the fact deposed to by those who witnessed it, that the confession was voluntarily given. I therefore concur in the view taken by the deputy commissioner as to the guilt of all the prisoners, and convicting them of being accomplices in burglary attended with murder, sentence them to imprisonment for life with labor in irons in transportation.

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Case of
GUNDHURPA
and others.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND NUND SAHOO

*versus*SUPNEE SAHOO (No. 1) AND KUNDROO BEARER
(No. 2.)

CUTTACK.

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Case of
SUPNEE SA-
HOO and ano-
ther.Prisoner
convicted as
an accomplice
in wilful mur-
der and of
having in his
possession the
ornaments
stolen from
the deceased,
sentenced to
transportation
for life, capital
punishment
being remitted
on account of
his youth.

CRIME CHARGED.—1st count, with the wilful murder of Bipra, boy aged eleven years; 2nd count, with stealing ornaments from the person of deceased, valued at rupees 39-6 3rd count, prisoner No. 1 with receiving the above, knowing the same to have been stolen on the 13th May 1853.

Committing Officer—Mr. W. Brown, deputy magistrate, sub-division Bhudruck.

Tried before Mr. M. S. Gilmore, sessions judge of zillah Cuttack, on the 10th September 1853.

Remarks by the sessions judge.—It appears that between the hours of 2 and 3 P. M. on Friday the 13th May, Bipra, aged eleven years, the son of Nund Sahoo, the prosecutor, left his father's house and did not again return. That towards evening his father, becoming anxious about his prolonged absence, went in search of him, and was informed by two children, Chuckreah and Muddooah, that Bipra was playing with them in the vicinity of the village of Muttoo (in which they lived and in which is situated a police *phandy* and retail salt golah,) when he was called away by Supnee Sahoo (the prisoner No. 1) on pretence of giving him some mangoes. That Nund Sahoo then went to Supnee Sahoo and enquired after his son, and was told by him that he had been in his company, but that they afterwards separated and went to their respective houses. That he then searched every where he could think of, but could find no trace of his son till about three *ghurrees* of the night, when Kishorychurn Maintee, the mohurir of the salt golah, with Unkoor Sahoo and others (there is much contradiction regarding the persons present when the body was found,) who were searching about with *mussals*, heard jackals quarrelling and snarling over something in the jungle contiguous to the village, and on proceeding to the spot, found the body of Bipra more than half devoured, it being, with the exception of the chest and head, which is said to have been perfect and distinctly identifiable, a mere skeleton; and having removed it thence to the police *phandy*, which is contiguous to the place where the *haut* is held, Kishorychurn Maintee, the salt mohurir, on the suspicion of Puddun Sahoo the plaintiff's father,

apprehended Unkoor Sahoo, Ram Sahoo, Sunnyc Sahoo, Supnee Sahoo, Kundroo Bearer and Punchoo Bearer, and placed them in charge of Brijo Mullick Chowkeedar and the other villagers, and in the morning sent information to the thannah; and though, on the first arrival of the thannah mohurir, Kundroo Bearer and Supnee Sahoo both denied having committed the murder, they are stated to have made confessions during the 15th May, criminating one another; and after much confusion and twice searching the house of Supnee Sahoo, the ornaments belonging to the deceased Bipra were produced by the said Supnee Sahoo from under some mats of his *dhan murrai*; and on the 16th May, the two prisoners were forwarded to the deputy magistrate of Bludruck, before whom Supnee Sahoo confirmed his mofussil confession, and Kundroo Bearer retracted his, stating that he had been induced to make it, to escape from the ill-treatment of the police mohurir.

The purport of the confession of Kundroo Bearer recorded by the police is as follows:—

“On Friday last, between 2 and 3 p. m., I saw Bipra at the *haut* and called him through Supnee Sahoo, on pretence of giving him mangoes, and took him into the *keora* jungle in the *serserry* dhee, where I seized him by the hair and held his head back on the ground, while Supnee Saloo throttled him and he died. I then took the two *roopa kurras* off his arms and Supnee took the two gold *noolées, phaseea* and three *dheoreas*, from his ears and neck. After which I threw the body into the jungle, and I gave the ornaments in charge of Supnee Sahoo, to be divided afterwards, and I went to the Muttoo *haut* and Supnee Sahoo to his own house. I was apprehended on the suspicion of the plaintiff by the salt chowkee peshkar, along with Unkoor Sahoo and others, and this day, on your questioning me, I said the property was in Supnee Sahoo’s house, and told the particulars of the case.” And on being questioned by the mohurir, who killed Bipra and why he had stated in the morning that he and Sunye Sahoo saw Supnee Sahoo and his mother kill the deceased in their *goal* or cow-house, he said that Supnee Sahoo squeezed his throat, and that his previous statement regarding Supnee and his mother’s killing him in their *goal* was false.

The mofussil and fouzdary confessions of Supnee are in all material respects the same and are to the following effect:—

“At noon on Friday last (13th May 1853,) the deceased, with Muddooh and Chuckreah, were coming away from the tank by the *mahadeo*, where they had been to wash their hands, and I was in advance of them, when Kundroo Bearer, who was standing by a cocoanut-tree, inquired what was

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selling by the side of the tank, and on my replying, that they were selling mangoes, he enquired where Bipra was. I said he was coming, and he told me to call him, which I did, and Kundroo having said something to him, took him to the open space inside the *keora* jungle where I followed them and stood in the shade of a mango-tree, where Kundroo told me to keep watch while he killed Bipra. He then took him into the *keora* jungle, ten *hathes* from where I was standing, and after one *ghurree*, I went to the spot and saw Kundroo Bearer had killed the deceased. I then told Kundroo I would inform his father, and he told me to take deceased's ornaments to my house, and after two days would divide them, and he tied up the ornaments in a piece of cloth and gave them to me, and I put them into my waist, and had come away a few paces from the spot where deceased was killed, when Kundroo Bearer took up the body and threw it into the jungle and went to the *haut*, and I took the ornaments and placed them in my *dhan murrai*. In the mean time the deceased's father not being able to find his son, the above-named children told him that I had called him away, and the *phandy* burkundauz apprehended me and my uncle and others and beat us, I stated as above, and the burkundauze confined me and Kundroo Bearer. And next day, on the mohurir's arrival, I confessed before him and produced the ornaments."

And in answer to questions put to him by the deputy magistrate he further stated : -

"I took three *sona dheorea*, one pair *sona nooleess* (ear-rings,) one *sona phasea*, two *roopa ballas*, and placed them in my house, whence I produced them. When Bipra groaned, I went and saw Kundroo Bearer squeezing his throat with both his big toes, and deceased's legs were kicking about. When deceased's throat was squeezed, he vomited blood, which I pointed out to the mohurir. The body found was deceased's (Bipra.) I called deceased, promising him mangoes." And on the 15th June, on being asked whether Kundroo Bearer told him for what purpose he called Bipra, he replied that he told him he would take his ornaments.

Before this court, Supnee Sahoo pleaded *not guilty* to the 1st and 2nd counts, and in reply to the 3rd, stated that Kundroo Bearer gave the ornaments into his hands.

Kundroo Bearer pleaded *not guilty* to both counts charged against him.

Of the three boys, Muddooha, Chuckreah and Uruth Bearer, (witnesses Nos. 17, 18 and 19,) who are said to have seen Supnee Sahoo call away the deceased, the two first, whose ages did not exceed 9 or 10, and 8 or 9 years respectively, were totally ignorant of the nature of an oath or the responsibility

attaching to making false statements, and consequently were not examined at all. And though Uruth Bearer did depose that he saw Supnee Sahoo call Bipra while he was collecting cow-dung, he also said that he did not see where Supnee came from, or where he took him; and it was not until he had been twice questioned regarding Kundroo Bearer, that he said he saw him at 12 o'clock in the day of the occurrence, standing near the police *phandy* and salt golah *dhee*. In the first instance he stated, he saw him in the *haut* in the evening, and although it appears that the prisoner Kundroo Bearer is his uncle, I do not think that he attempted to screen him in any way. I am rather inclined to believe from the fact of his not having been cited as witness till ten weeks after the occurrence, and his evidence in no way corroborating the statement of Kishory Churn Maintee, the salt mohurir, whose evidence caused him to be summoned and examined, that he knew nothing about the matter.

The only other circumstantial evidence, tending in any way to establish the guilt of the prisoners, is that of the above-named Kishory Churn Maintee and Doulat Sing, the burkundauze stationed at the time at the Muttoo *phandy*, who deposed that the two prisoners criminized one another and that Kundroo Bearer indicated the property being in the house of Supnee Sahoo, and their testimony in my opinion should be received with the greatest caution, for it is evident that the said Kishory Churn Maintee, though unconnected with the police, superintended every part of the mofussil enquiry, even to the recording of the confessions, which were apparently written after the prosecutor and the villagers retired to their houses for the night, and at all events, when no one but the attesting parties were in attendance. Whereas if, as is alleged, the prisoners confessed and pointed out the property, which was produced at about 2 p. m., there is no valid reason why their confessions should not have been recorded during the day instead of at night. Moreover, great suspicion exists in my mind, as to finding of the property, for though the house of Supnee Sahoo is a mere hut, and the *dhan murrai* whence the ornaments were eventually found is situated in the said hut, the house was twice searched before they were produced, and in the interval, as appears from the evidence of Nund Sahoo and Kishory Churn Maintee, Supnee Sahoo had gone to the jungle in search of some of the property and returned saying it was not there; and the police mohurir, instead of reporting that Supnee Sahoo's house had been twice searched, reported that after searching the house, he discontinued the search and retired to the *phandy*, *in consequence of the great heat of the weather!* and on renewing it, the ornaments

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were found in the *dhan murrai*, thereby leaving it to be understood, that neither the *dhun murrai* nor the house in which it was had been previously searched at all.

The remaining part of the evidence relates to the finding of the body and the ornaments and their identification, and the attestation of the confessions which were deposed to as having been voluntarily made.

At the close of the trial, Supnee Sahoo, as well as Kundroo Bearer, denied *in toto*; and the latter repeated his assertion, that he had been ill-treated by the police and tutored to confess, but as even those who had been beat with him, denied all knowledge of the fact, he was unable to adduce any witnesses in support of it.

The *futwa* of the law officer, which is filed with the record of the trial, convicts the prisoner Supnee Sahoo on his confessions, his first answer before this court, the production by him of the ornaments which belong to the deceased, and the general circumstances of the case, of aiding and abetting in the murder of the deceased, and having in his possession the property stolen from him, and declares him liable to punishment (*akoobut*). And holding the mofussil confession of Kundroo bearer to be inadmissible as legal evidence against him, and otherwise mistrusting it and the evidence of Uruth Bearer, &c., it declared him entitled to his acquittal.

Although considerable suspicion is created in my mind against Kundroo Bearer, in consequence of his being named by Supnee Sahoo, and his having made a confession, whether forced or voluntary, in the mofussil, and his having stated before the magistrate, that Supnee Sahoo killed him, and that Supnee had his ornaments, &c.: this does not amount to proof on which to issue a capital sentence, neither is there a single credible witness to his having been present, or near the spot, when Supnee Sahoo states he called the deceased away. As for the evidence of Uruth Bearer, a boy of 13 years of age, who was produced two and a half months after the occurrence, to depose that he saw him, it is totally untrustworthy and opposed to the statement of Kishory Churn Maintee, the mohurir of the Muttoo salt chowkee, whose evidence of the 25th July was the cause of his having being summoned and examined; and the circumstance of his having been adduced at so late a period tends, in my opinion, to cast distrust on all the rest of the circumstantial evidence that has been adduced against Kundroo Bearer. Moreover, Kundroo Bearer, immediately on being taken before the deputy magistrate, stated that he had been beat by the police, though he was unable to adduce any witnesses to prove the fact. (But there is nothing to be surprized at in that, for prisoners never are able to adduce any witnesses

to such a fact, though their being beat by the police is not an uncommon occurrence.) And before this court he stated that though he said before the deputy magistrate that Supnee killed the deceased, and also told the mohurir that Supnee had his ornaments, he did not see him kill the deceased, and that on the mohurir's beating him he said that the *mal* or ornaments would be found in Supnee's house, as Muddooh and Chuckreah had said that he called deceased. Besides this, Kundroo Bearer was not apprehended on the information of Supnee Sahoo ; he was apprehended on the general suspicion of the plaintiff's father, with five others, including the said Supnee, by the salt golah mohurir Kishory Churn Maintee, before whom Supnee Sahoo denied, as he did also when first questioned by the thannah mohurir, and therefore I cannot consider the statements of Kundroo in the light of a voluntary confession, and from the general circumstances attending the case, I do not think it improbable, that Supnee Sahoo who is boy of 14 years, was tutored by others to name Kundroo Bearer, and I therefore concur in the *futwa* in acquitting him, and convicting Supnee Sahoo of being an accomplice in the murder of Bipra and having in his possession the ornaments stolen from his person. And under all the circumstances of the case, and the youth of the prisoner, I recommend that he be imprisoned for life in transportation beyond sea.

Great delay occurred in the investigation of this case before the deputy magistrate, but it appears to have been occasioned by the non-attendance of the salt mohurir, Kishory Churn Maintee, who was three times summoned through the salt-agent.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The confessions of the prisoner No. 1, are proved to have been voluntarily made and are corroborated by the fact of his producing the ornaments which the deceased wore, when he was last seen alive. The sessions judge's suspicions, as to the finding of the ornaments, are, I think, without grounds. I see no reason to discredit the evidence to the fact, and the prisoner himself, after repeated warnings by the sessions judge, pleaded *guilty* to receiving the ornaments from the prisoner No. 2, (who has been acquitted,) though not with a guilty knowledge.

There is no ground for distrusting the testimony of the salt mohurir and the police burkundauze. The conduct of the former was most praiseworthy and he deserves much credit for the diligence which he used. Though the evidence is not legally sufficient to convict the prisoner No. 2, yet it creates the strongest suspicion of his guilt, and of the

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prisoner No. 1, a lad of only 14 years of age, being a mere tool in his hands. It was, I think, almost physically impossible for a boy of such an age to throw down a boy only three years *younger*, and unaided, to strangle him. The ordinary sentence for this crime is death, but adverting to the above circumstances and the youth of the prisoner, I consider him an object of mercy, and therefore, convicting him of being an accomplice in the murder of the boy Bipra, for the sake of his ornaments, I sentence him to imprisonment for life in transportation.

PRESENT:

J. DUNBAR, Esq., Judge.

SEETARAM AND GOVERNMENT

versus

KOONJBEHAREE.

PATNA.

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KOONJBE-
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Prisoner,
convicted of
culpable ho-
micide, senten-
ced to seven
years' impri-
sonment,
though the
sessions officer
recommended
a higher term.

CRIME CHARGED.—Wilful murder of Musst. Lutchmin.
Committing Officer—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. B. J. Colvin, officiating commissioner, with the powers of a sessions judge, Patna, on the 1st October 1853.

Remarks by the officiating commissioner, with the powers of a sessions judge.—The prosecutor's story is to the effect that prisoner's wife, on the 4th ultimo, believing herself bewitched, accused the deceased with being a witch, who came forward and denied the imputation, saying if she proved one, they might do what they liked with her. Thereupon, the prisoner assaulted her with his club so severely, that she died in the afternoon of the next day. A report was immediately sent to a neighbouring burkundauze, who arrived on the ground that day, and on the following day the darogah arrived, who sent in the body for examination, but it arrived in such a state of decomposition, that Dr. Dicken reported on the 11th,* that it was impossible to ascertain the cause of death.

The witnesses for the prosecution describe the assault, the senseless state of the woman in consequence, and her death next day. She is described as having been a healthy middle-aged woman, who worked both in and out of doors for her livelihood.

The prisoner's defence is that the woman was weakly and ill and died of disease, and that advantage has been taken of her death by the prosecutor and his witnesses to get up this case against him from enmity, on account of demands for rent,

* The delay in the arrival of the body was caused by the flooded state of the country in consequence of very heavy rain for some days previous.

which, as village gomashta, he had against them: he also states, and his witness deposes, that he was on the day of death absent, attending to the repairs of a bund.

Conflicting as the evidence is, I still think that, that for the prosecution, sufficiently proves that the deceased died from the blows inflicted by the prisoner. The club which however is not forthcoming is described as a heavy instrument, and about as thick as a man can clasp by joining his finger and thumb; the blows are not said to have fallen on the head, which would have been said had the charge been false, and the deceased is said to have gone forward of her own accord to deny the imputation of being a witch. One witness only (Manik) says, prisoner ordered her to be brought to him, but that she nevertheless came of her own accord. The witness Soopun Khan Burkundauze, who is an independant witness, says that he saw the body of the deceased on the day of her death and that it bore marks of blows from a *lattee*, and showed no appearances of deceased having been before death weak or unhealthy. This burkundauze further deposes that the *bund* which the prisoner states he was cugaged in repairing was not under repairs then, and that the prisoner did not, when he apprehended him, say he had been at the work, neither did the prisoner set up this defence at the thaunah nor before the magistrate, although his witnesses in the fouzday court stated his presence at the bund.

The law officer convicts the prisoner only of culpable homicide and declares him liable to *deyut* or the fine of blood.

I concur in this opinion, not thinking that the charge of murder can be sustained, as the prisoner would have taken care to strike the deceased on the head or other more certainly mortal part, had he intended taking her life. Still the attack was wanton and ruffianly. I therefore refer the case for the Court's orders, as I thing a sentence for seven (7) years' imprisonment, which is all I can pass for such an offence, insufficient to meet the ends of justice. I propose that the prisoner should be sentenced to fourteen (14) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present; Mr. J. Dunbar.)—The evidence for the defence is numerically strong, but not in my opinion sufficient to establish the innocence of the prisoner. The statement of the prosecutor and the eye-witnesses is simple, probable and consistent, and is strongly supported by the evidence of the witnesses to the *sooruthal*, and of the burkundauze, who arrived in the village not long after the death of the woman; while the evidence for the defence, even if true, is not such as to prove that for the prosocution to be false, for it is vague and indeterminate as to time and

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distance from the prosecutor's village. I concur in the conviction, but as there would not appear to have been any intention on the part of the prisoner to do the deceased any serious injury, and with reference to precedents in such cases, I think a sentence of imprisonment for seven (7) years with labor in irons is sufficient. Let sentence issue accordingly.

PRESENT :

J. R. COLVIN, Esq., } Judges,
J. DUNBAR, Esq., }
AND
A. J. M. MILLS, Esq., }
AND
H. T. RAIKES, Esq., } Officiating Judges.

CHUTTOO GOALA AND MUSST. JHONIAH GOALEEN AND GOVERNMENT

versus

DEORAJ SINGII RAJPOOT.

BEHAR.

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Case of
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In a charge of rape on a woman fifteen years of age, in which the sessions judge differed from the law officer, the first judge of the court, who took up the case, recorded his opinion in favor of the prisoner's innocence, but sent in the case to a second judge, who held the prisoner to be guilty of rape. The case was then sent to a third judge, who convicted the prisoner of an aggravated assault, so that it became necessary to send it before a fourth judge, who, agreeing with the second judge, convicted the prisoner of rape and sentenced him to seven years' imprisonment.

N. B. — The prisoner was subsequently pardoned by Government at the recommendation of the Court, he being entitled to the benefit of the opinion of the judge who first took up the case and acquitted him, in concurrence with the sessions judge, under Clause 4 Sec. IV. Reg. IX, 1821.

CRIME CHARGED.—Rape on Musst. Jhoniah, girl.

Committing Officer—Mr. F. C. Fowle, magistrate of Behar. Tried before Mr. T Sandys, sessions judge of Behar, on the

27th July 1853.

Remarks by the sessions judge.—The prosecutor and prosecutrix reside at Malee Beega, inhabited solely by *goalas*, but he belonging to the village of Ekowna, close by on the opposite bank of the Jumna nuddee. The prisoner is a resident proprietor of Kurga, a large village bordering Malee Beega.

The prosecutrix, a well-grown girl, upwards of 15 years of age, is unmarried, and why so, is not satisfactorily explained. She and the two witnesses, Musst. Rooniah (No. 1) and Lukheea (No. 2) depose, that on the morning of 17th May last, all three were together collecting cow-dung on the Kurgah lands, when the prisoner approaching them, first seized Musst. Rooniah, who struggling and escaping, he then caught the prosecutrix, and

the case, recorded his opinion in favor of the prisoner's innocence, but sent in the case to a second judge, who held the prisoner to be guilty of rape. The case was then sent to a third judge, who convicted the prisoner of an aggravated assault, so that it became necessary to send it before a fourth judge, who, agreeing with the second judge, convicted the prisoner of rape and sentenced him to seven years' imprisonment.

throwing her down, completed the crime with which he stands charged, in the presence of her two companions, Rooniah and Lukheea, who state they did every thing in their power to prevent it. Boota (No. 3,) Hurdut (No. 4) and Dookhee (No. 5,) *goalas*, ran up at their outeries, and in like manner deposed to having seen the prisoner in the act. The father Chuttoo, prosecutor, also arrived and conveyed his daughter home, senseless, from the spot.

Simultaneously with the prosecutor's complaint at the than-nah through Jhurree Dosad (witness No. 11,) *gorahit* of Ekowna, on the 17th of May, information was also lodged by Bundhoo, *gorahit* of Kurga, to the purport that "the prisoner finding several *gawaleens* of Malee Beega collecting cow-dung on the Kurga lands, warned them off, when the women setting up an outcry that he was dishonoring them, Boota and other *goalas* of Malee Beega ran up, beat the prisoner with sticks and clubs, and laid his head open." The prisoner's statement of the following date was however of a different tenor. His person showed some five slight marks. He declared the accusation against him to be totally false, got up to screen his own counter-complaint, to the effect "that he was the same morning returning with collections amounting to rupees 15/- from Chatur, a bordering village in his lease, and meeting Boota (witness No. 3) and other *goalas* of Malee Beega, passing along armed, and challenging them as to what they were after, they attacked, beat and plundered him." He called numerous witnesses in support of this story, both before the magistrate and this court, as he has invariably maintained the same defence, with the addition of the Malee Beega *goalas*, owing to their grazing propensities, being very troublesome neighbours.

Musst. Mongeah (witness No. 6) and Dr. Diaper's deposition are conclusive as to the prosecutrix's person having shown signs of violation. The latter also, on so late a date as 21st May, observed contusions and scratches, as if she had been struggling on some rough surface of ground. Dr. Diaper also found four simple incised wounds on the crown of Deroaj Singh's head, each about three inches long, nearly parallel to one another, and appeared to him from such direction and from the absence of any other marks of violence to have been self-inflicted by some small cutting instrument, such as a knife, and could not have been inflicted by a *lattice*. Rooniah and Lukheea (witnesses Nos. 1 and 2) depose that Rooniah broke one of her brass armlets, whilst beating the prisoner on the head. This armlet is said to have been of the same kind she wore in court, which, as usual with persons of this class, are very heavy, and smooth, free of sharp edges of any kind, and to which therefore, for the same reasons, the marks seen by Dr. Diaper do not correspond.

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If the armlet had been broken in any such manner, it must have left unmistakeable marks of such violence.

The *futwa* of the law officer rejecting the defence set up as inconsistent, frivolous and improbable, and viewing the improbability of the prosecutor's victimizing his family and relatives by a false complaint on such a charge, accepts the evidence for the prosecution, and finding the prosecutor guilty of the crime charged, declares him liable to discretionary punishment by *akoobut*.

I fear there is a mass of perjury and concoction on both sides in this case. I quite agree with the law officer, relative to the worthlessness of the prisoner's defence, the worst feature against him to my mind throughout the trial. The *corpus delicti* by itself does not seem entitled to unlimited reliance in a country like this, ever fertile in judicial expedients. The girl from first to last has always been in the hands of her own relatives. It is not impossible that such results may have been secretly accomplished with their connivance without loss of caste, or even if so, easily remedied by persons of the prosecutor's class, besides a *goala* prosecutor could scarcely expect to prosecute a village Rajpoot *malik* successfully without proceeding to unusual lengths. It is unsafe therefore to trust to the *corpus delicti*, unless well supported in every other respect, which I do not find to be the case, when I regard the evidence for the prosecution as so utterly untrustworthy, and full of such gross inconsistencies and improbabilities as to forbid my resting any conviction on it.

It is highly improbable, a person in the prisoner's position could have had any inducement to commit the crime charged under the circumstances deposed to. If of vicious habits, it was easier for him with means to gratify them in private, than so unnecessarily to risk doing so in such a rash and outrageously public manner. He is said first to have seized the young woman Rooniah, and on her escaping to have taken the prosecutrix. There was thus no particular object on the occasion, utterly unaccountable therefore as deposed to, unless supposing the prisoner to be a person of such violently depraved habits as ought scarcely to have failed to put him out of caste. Accordingly the police reported him as a person of dissolute habits, but on no better proof that I observe than witnesses Nos. 3 to 5's testimony, who are recorded as having said "that the prisoner was in the habit of committing such outrages on women whenever he found them alone," which these witnesses acknowledged, when questioned before this court, but when further examined could give nothing but generalities by way of explanation, which have I think been amply disproved by the prisoner's witnesses whilst under

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examination ; such statement also throws discredit on the women's testimony, for they were thus three together, and not alone, and if the prisoner was such a notorious character, it is incredible that they should have allowed him to approach them.

According to Rooniah, Kurga was within sight, and she saw the prisoner from a distance coming thence, 'but made no attempt to get out of his way, whilst Lukheea was too much engaged in her work to notice any thing else. Even this much was elicited from them with difficulty and with much prevarication. The father has on all occasions said that he was thatching his house when the alarm was set up, though how he heard it is difficult, as he told the police, not likely to have misrepresented him on the present occasion, that he heard it from Rooniah and Lukheea, who came crying towards the village, which, if the case, at once stultifies their evidences, as also those of Nos. 3 to 5, which make out that they never quitted the spot, or they never could have been the eye-witnesses all five represent themselves to have been.

Distances, time and place are points very generally recklessly deposed to by native witnesses, as has been singularly, if not fully, adhered to, during the present trial ; so much however is certain, that Malee Beega, on its own side of the Jumna, is not altogether above 200 beegas. The place of the occurrence, or Teykeebad, is described as close to the Kurga and Malee Beega boundary, and according to witnesses Nos. 3, 4 and 5, not above 10 to 15 fields' distant, with no obstacle to the sight intervening, from *pan* field in Malee Beega, where they were working and whence they ran up on hearing Rooniah and Lukheea's outcries. It must have been close, or they could not have seen what they deposed to. Kurga is at a great distance from Teykeebad. The occurrence, as thus shown to have taken place, must have been within hail of the alleged victim's village, full of *goalas*, men ever ready to resent an injury, and who, if the prosecutor heard the alarm from the roof of his house, must also have been equally aware of it, whilst the prisoner was alone, unarmed, almost it is said undressed and at a sufficient distance from his own village to be beyond all immediate chance of protection or rescue. To credit the prosecution therefore, it is necessary to believe that the prisoner would have attempted such a crime at all risks and in the face of difficulties thus locally well known to him, and next, that having been seen in the act by witnesses Nos. 3, 4 and 5, and a fourth *Chukowree*, as named by all three before the police, that they would have allowed him to escape, as they say they did, through fear of him. It is also impossible to rely on the testimony of witnesses, so manifestly packed as these are, as to savor of conspiracy by the Malee Beega

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goalas. An outrage of this singular kind could not have taken place without at the time creating an unusual uproar in the neighbourhood, especially in the large parent village Ekowna so close by, inhabited by all classes and the one most likely to have protected the Malee Beega *goalas*, but nothing of the kind was heard there, as is apparent by the proceedings throughout and as admitted by the *gorahit* Jhurree (witness No. 11) before this court. Teykeebad also is a place of resort and thoroughfare, being a cattle stand for most of the neighbouring villages. It is altogether unaccountable that a person, besides the three Malee Beega *goalas*, witnesses Nos. 3, 4 and 5, and the two women Nos. 1 and 2, should have been about the place at such a time, when these three *goalas* admit that several herds of cattle, belonging to different villages, were at the time there, but not a single person in charge of them! Thus entirely distrusting the evidence for the prosecution, I would acquit the prisoner for want of proof of his guilt.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. R. Colvin, J. Dunbar, A. J. Mills and H. T. Raikes.)—*Mr. J. Dunbar*.—After perusal of the record and careful consideration of the evidence, I concur with the sessions judge in thinking the case not proved. In addition to the reasons which he has detailed for distrusting the evidence, I must observe, that as notice of the alleged assault upon Deoraj Singh reached the thannah on the same day as that of the rape, justice required that some enquiry upon the subject should have been made, but no investigation of the kind was held, which is the more extraordinary, as the mohurir's reports show, that it was not till the evening of the third day after his arrival on the spot, that the two principal witnesses against the prisoner, Mussts. Rooniah and Lukheea, could be found; a circumstance which was of itself sufficient to excite suspicion.

In regard to the case for the prosecution, the whole thing appears to me to have been over-done. There is every reason to conclude from the notice first given at the thannah, as well as from several passages in the record, that, as alleged by the prisoner, Musst. Jheonia's husband is alive: this point should have been cleared up, as if so, he is the proper person to prefer such a charge. Then again, it is not easy to believe, that any man could consummate a rape under the circumstances sworn to. The spot was within sight of the village, and so near that the alarm was immediately heard, and it is to be supposed that the two women would have found it easier to relieve the girl by dragging the prisoner off, than by pounding him on the head with their armlets. Further, the strong symptoms of violence in a girl of such mature age and the

scratches and contusions on her body, force upon the mind a suspicion that means may have been found to get up these evidences of guilt. Be this as it may, I distrust the direct evidence, and would acquit the prisoner.

Mr. H. T. Raikes.—I differ from Mr. Dunbar and the sessions judge in thinking this is a got-up case. The evidence of the medical officer, in my opinion, fully establishes the fact, that the girl Jhooniah was violated. The peculiar symptoms adverted to by him, and the marks of violence on other parts of her person, leave no doubt on my mind of that fact.

I see nothing so improbable in the story told by the eye-witnesses as to discredit it altogether on that account, and the discrepancies regarding time and the arrival on the spot of the father and others are not of a nature to lead me to doubt the actual occurrence of the material facts deposed to. Some allowances must be made for the confusion and excitement the female witnesses were doubtless thrown into, by the sudden and unexpected acts of the prisoner, and I dare say these witnesses may have greatly exaggerated their own efforts for the rescue of their companion, but I see nothing to induce me to throw over their evidence entirely.

The truth and credibility of the girl's story is, in my opinion, still further borne out by the fact, that no enmity is shown to have existed between her family and the prisoner to warrant the belief, that such a charge as this would have been wantonly brought. The prisoner has merely charged the prosecutor and the witnesses on his side with entertaining angry feelings towards himself generally, as one who has attempted to suppress the trespassing of their cattle on his land. The specific accusation, brought forward by him on this particular occasion, has been so completely falsified by the assistant surgeon's evidence to the non-existence of any marks of violence on prisoner's person, beyond those which appear to have been self-inflicted, and could not by any means be accounted for as the effects of the violent assault he complained of, that I look upon the defence as strong corroboration of the girl's story and quite unaccountable, save as a trumped-up story to meet, and if possible swamp the charge he knew would be brought against him.

I would convict the prisoner of the rape charged and I would sentence the prisoner to seven (7) years' imprisonment; but as Mr. Dunbar is for acquittal, the case must go before another judge.

Mr. J. R. Colvin.—I agree with the sessions judge and with Mr. Dunbar in entirely discrediting the direct evidence for the prosecution in this case.

That the prisoner should have attempted to commit an act of such open outrage between 6 and 7 in the morning, close

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to the village, which was occupied by the relatives of the females, and members of their own *goala* caste, and that their cries should not have brought together a number of persons from that village, and from the immediately neighbouring village of Ekowna, with which it is connected, so as to render the escape of the prisoner, (who is stated to have been alone and unarmed) impossible, seems to me to be quite beyond belief.

The evidence of the three male witnesses is evidently, to my judgment, tutored. Nothing was said of them, as having knowledge of the transaction in the first report made to the thannah on the 17th May, by the *gorait* of Ekowna, and if they had really come upon the alarm, very many other persons would have come also.

The two women, who were with the young girl Jhooniah, are 30 and 32 years of age. That if such an outrage had been attempted in their presence by the prisoner, who was without companions, they should not have prevented the accomplishment of his purpose, and likewise given a much more effectual alarm so as to assemble all their relatives and neighbours, is also what I cannot credit.

On the other hand, the prisoner has admitted his presence on the spot and at the time, and has endeavored to account for it by contradictory and plainly false statements. He has shown a consciousness of *guilt* in connection with his conduct on the occasion, by the slight wounds or cuts which he must have caused to be made by some small instrument on his own head; and there can be no doubt, I think, that intercourse must have been had with the girl with circumstances, at some stage or other of it, of force and violence, as shown by the severe scratches and the contusions on her person. There was not time, as it appears to me, for inflicting these injuries on her, so as to make up an entirely false charge against the prisoner, before the complaint was made on the same day at the thannah.

The reasonable conclusion from all the facts seems to me to be, that the prisoner had intercourse with the girl on that morning, at first perhaps by consent, and with the cognizance, if not by the contrivance, of the two older women; that the girl afterwards got frightened or hurt, and struggled, when (at what precise time, or under what exact circumstances, cannot be ascertained) force was used by the prisoner, so as to cause the scratches and contusions, and that the girl became seriously injured when the women went crying* to the village to tell her father, and the story

* See the first mention by the police of the information given to the girl's father, as referred to at the close of paragraph 8th of the sessions judge's letter.

of the rape, as it is now in evidence, was got up to screen her and themselves.

There is not evidence on which to convict the prisoner of rape, as it cannot be known when the force was used. But there is evidence which, in my opinion, justifies and requires his conviction for an aggravated assault. I would so convict him, and sentence him to imprisonment for three (3) years, and payment of a fine of rupees, 200 payable within 14 days of the communication of the sentence to him, or, in default of payment, to labor as usual.

Mr. A. J. M. Mills.—This case is referred to me for a fourth voice, in consequence of the three judges, who have taken it up, disagreeing in opinion as to the sentence to be passed upon the prisoner.

Mr. Dunbar is for acquitting the prisoner in concurrence with the sessions judge. Mr. Raikes is for convicting him of rape, agreeing with the *futwa*, and Mr. Colvin discrediting the direct evidence for the prosecution, but thinking the proof sufficient for the conviction of the prisoner of an assault, would punish him for that offence with *three* (3) years' imprisonment.

The prisoner was undefended before the three judges above mentioned. Before me he has been represented by Baboo Jugdanund Mookerjee, and Baboo Sumbhoonath Pundit has appeared on the part of the prosecution.

I have attentively considered the evidence, and the arguments of the pleaders against and in support, of its credibility, and concur in opinion with Mr. Raikes, that the girl was forced against her will, and that the prisoner is guilty of the rape charged.

I see no ground whatever for suspecting that the evidences of guilt were got up. It is hardly possible to conceive that the prosecutor would sacrifice the honor of his daughter, for the purpose of bringing a false accusation against the prisoner, who was only obnoxious to the the village community generally, but bore him no personal enmity.

The discrepancies in the evidence of the two women, who were in company with the young girl, regarding the clothes which the prisoner wore, the time taken to commit the act and the regularity of the occurrences are not of such a nature as in my opinion to shake the substantial credibility of their statements. The same remarks apply to the testimony of the three male witnesses. It is true that nothing was said of them in the first report made at the thannah by the *gorait*, but it is not always usual for the *gorait* to name the eye-witnesses to the occurrence of the crime he reports, and they were named the next day by the prosecutor. Moreover, the presence of the witness

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Boolah on the spot and at the time is admitted by the prisoner, as he is one of the persons whom he charged with beating and plundering him.

As regards the improbability of the girl's story, I see no reason to distrust it on that ground. The women were gathering cow-dung in a reservoir for collecting rain water, to water the fields. The rough sketch of the place, drawn by the police officer, shows that its sides were planted with babool or memosa trees, and that it was seven *russees* or 280 yards distant from the nearest village, while the witnesses depose to the spot where the girl was thrown down in the reservoir as being knee deep below the surface. That a person of depraved habits should commit such an outrage early in the morning, at a spot somewhat sequestered and certainly not exposed to public view, does not seem to me to be beyond the pale of belief.

The evidence for the prosecution is further corroborated by the admitted presence of the prisoner on the spot, and by the manifest falsehood of the counter-charge which he preferred, and clearly establishes the guilt of the prisoner. In concurrence with Mr. Raikes, I therefore sentence him to seven (7) years' imprisonment with labor and in irons.

PRESENT:
J DUNBAR, Esq., Judge.

GOVERNMENT AND JEEBUN
versus

JERKOOS (No. 2,) BHORA (No. 3,) CHAMAROA
(No. 4,) LOORKOA (No. 5,) CHUMRA (No. 6,)
BOODHOOS (No. 7,) JHURRY (No. 8,) JODHA
(No. 9,) MADHO (No. 10,) AND CHYTUNOA (No. 11)

CRIME CHARGED.—Prisoners Nos. 2 to 9, dacoity and plunder of property valued rupees 28 and 2 annas, with the wilful murder of Bundeally Khan brother of Fyzoolah Khan and severely wounding the prosecutor Jeebun with intent to do him some bodily injury. Prisoners Nos. 10 and 11 being accessories to the crime after the fact.

Committing Officer—Captain W. H. Oakes, principal assistant, governor general's agent, Lohardaga, Hazareebaugh.

Tried before Major J. Hannington, deputy commissioner of Hazareebaugh, on the 29th July 1853.

Remarks by the deputy commissioner.—It appears on the record, that the case occurred on the night of Wednesday, the 1st June last.

The prosecutor Jeebun states that he had encamped near a granary in Jatee village, and at about 10 p. m. observed two men creeping about. He asked who they were, but got no reply. Prosecutor then roused his companions, and had just done so, when suddenly a volley of stones was thrown on them. One struck him on the side of the head and felled him. When down, he was struck by some one with a club. The robbers took some brass vessels and made off. It was then found that Bundeally Khan had been wounded and was dying. He breathed a little till after day-break, and then died.

The prisoners plead *not guilty*.

No. 1, witness Aukberally Khan, states that he with some others had encamped with a drove of bullocks close by Jatee village. At about 10 p. m. a volley of stones was thrown into camp; two of them struck Jeebun, and witness and his companions ran for refuge into the camp of another set of bullock drovers. But the robbers came there also, and threw stones, one of which struck Bundeally Khan on the neck and wounded him badly. Outcry was made, but no help came. The robbers carried off all the property. Bundeally Khan was then carried into the granary, where he soon afterwards died. In the morning information was sent to the police at Lohardaga, and enquiry was begun the same day. A boy named Porha gave a clue to the prisoners. Jerkooa,

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Eight pri-
soners, con-
victed on their
own confes-
sions of da-
coity with
murder, sen-
tenced to
transportation
for life. Two
others, convic-
ted as accessa-
ries after the
fact, sentenced
to five years'
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Boodhoa and another were taken up and made voluntary confession. The broken pole now in court was found in Jerkooa's house ; he had used it to carry the grain to the house of Muhlee, the grain-dealer ; the fragment of it was picked up in the camp. The stones produced in court cannot be identified. They were sent in as specimens. The stones thrown were such as these. The property now in court belonged to Bundeally Khan. Witness further proves the record of the inquest.

No. 2, witness Moorad Khan, states that he with Jeebun and Seebun and others, cattle-drovers, encamped near Jatee village. At midnight a gang of about 20 robbers attacked them with a volley of stones. Some of the assailants laid hold of Bundeally Khan and beat him. He cried out and fell down, and on seeing this, the witness and his companions fled in all directions. Jeebun went to the village and raised an alarm, but not a soul stirred. After a while, when the robbers had made off with the goods, witness and his comrades returned to the camp and found Bundeally Khan lying and faintly breathing. They carried him to the granary, where he soon died. When day broke, information was sent to the police, and during the enquiry a boy named Porha told the darogah that he had seen Jerkooa go to the westward, and that when the drovers made outcry, he (Porha,) had recognized Jerkooa's voice. Upon this information, Jerkooa was apprehended and he then made full confession. The broken pole was found in his house, and the piece picked up in camp fitted into the fracture. Some brass vessels were also found. The bit of the pole was found by Azim Khan. The property now in court belonged to the deceased Bundeally Khan.

No. 3 witness Jectun } These corroborate the pre-
 " 4 " Secbun, } ceding evidence.

No. 5 witness Pokhun Lall, } These witnesses prove
 " 6 " Soburn Sing, } the apprehension, first
 " 7 " Azumally Khan, } of the prisoner Jerkooa,
 " 8 " Warris Ally } and then of the others
 " 9 " Khan, Buxoo, } on his confession.
 " 10 " Sukroo,

No. 11 witness Boodhooram, } Prove the record of
 " 12 " Ramnarin, } the inquest. State
 " 14 " Preyag, } that on the night of
 " 15 " Mohur, } the robbery of the
 " 16 " Dusrut, } drovers, witness with

Boodhon, Birsa, Rama and Rundhum were sleeping, in the granary at Jatee village, and that at midnight the drovers brought Bundeally Khan to the granary where shortly afterwards he died. When the darogah came, witness men-

tioned to him that on the night of the robbery he had recognized the voices of the prisoners Jerkooa and Chumroa, as they spoke while decamping. Witness then went with the darogah to Duha village, where Jerkooa was apprehended, and after him, Madho and Chytunoa, Chumra and Boodhooa fled. Chytunoa's wife gave information of a basket of rice being left with Mahly Modee, and it was found accordingly. Chytunoa and Madho confessed. Then, on the information of Jerkooa, the prisoners Jodha and Bhora were taken up, and on their showing, two baskets* of rice were found in the house of Dooka! Khol. Jodha and Bhora confessed also. Witness has known the prisoner Jerkooa for a long time ; he lives but a mile off, and is a village watchman.

No. 17 witness Khedhun, } These witnesses prove the
" 18 " Bheekoo, } confessions of the prisoners
" 19 " Kundun, } before the police.

The tenor of the confessions of the prisoners Jerkooa (No. 2,) Bhora (No. 3,) Chumroa (No. 4,) Loorkooa (No. 5,) Chumra (No. 6,) Boodhooa (No. 7,) Jhurry (No. 8,) and Jodha (No. 9,) is to the effect, that they met in the evening at the house of the prisoner Jodha and agreed to rob the *beparees'* Jatee village. That accordingly they went, drove away the *beparees* by throwing stones, and then robbed the camp of grain and other articles. The prisoners do not admit having intentionally killed the deceased ; they were not aware of the fact at the time.

The tenor of the confession of the prisoner Madho and Chytunoa is, that they knowingly received the stolen property from the prisoner Jerkooa and left it with Mahly Modee, telling him that it was Jerkooa's own property.

No. 20 witness Oulad Allee, }
" 21 " Boolaky, } These witnesses
" 22 " Nutha Khan, } prove the confes-
" 23 " Rajnath, } sions before the
" 25 " Oozeer Khan, } principal assistant.
" 26 " Shaik Mahomed Tukkee, }
" 28 " Bholee Ram, }
" 29 " Chuttoorbhoojnath, }

These confessions correspond as to the main facts, with the previous confessions. No. 39, witness Mohelly, states that on a Thursday night, about 10 o'clock, the prisoner Chytunoa (No. 11) and Madho (No. 10) brought two baskets of rice, which they said was their own to his shop, and asked him

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* The word in the original is *mura*, which has no English counter-part. The grain is packed in straw, with a rope twisted round it. The package is called a "mura."

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others.

to take charge of them, which he refused to do. But they laid down the rice and went away. The quantity was about two maunds and witness put it inside the house, lest the pigs or other cattle should destroy it. Witness brought it of himself to the police officers. Witness and the prisoners dwell in the same village.

No. 31, witness Musst. Seebun, states that when the darogah came, she of herself brought to him two earthen vessels, which were closed, and contained she knew not what. They had been left in the verandah by her son, the prisoner Chumra.

No. 32, witness Porha, a boy of 13. "To tell lies would be wrong." On the day of the robbery, in the evening witness saw the prisoner Jerkooa coming from the direction of the *beparees*' camp. On the same night witness was sleeping in the granary, and when the robbery occurred, he heard the prisoner Jerkooa say, "*Hit the —— * Hit the ——" Witness knows Jerkooa very well. Knows his voice.

No. 33, witness Dooka, states that when news of the darogah's coming was spread, just at day-light, the prisoners Jodha and Bhora brought two *muras* of rice and left them in the cow-shed. Witness asked whose it was, they said it was their own, and then went away. When the darogah arrived, witness told him of this. All the people of the village were absent in the fields at the time.

There is no further evidence of any importance.

The prisoners Nos. 2 to 9 inclusive, in their defence, acknowledge having made confession, but assert that before the police officers was extorted by beating, and that before the assistant made through fear.

The prisoners Nos. 10 and 11, in their defence, repeat the substance of their previous confessions. They acknowledge having received rice from the prisoner Jerkooa, who is the son of No. 10 and brother of No. 11, but they deny having knowledge that the property was stolen.

The witnesses for the defence say nothing in favor of the prisoners.

The jury, whose names and professions are entered below, ‡ find all the prisoners *guilty* as charged.

In this verdict I concur. That the prisoner Jerkooa's voice was recognized by the boy Porha is perfectly credible, and the clue thus obtained led to the apprehension of all the prisoners and the discovery of some portion of the plundered property. That the confessions were voluntarily made and that they are

* The word in the original is *sar*, brother-in-law, an abusive term.

‡ Ukhory Enjary Lall mookhtear and Lalla Gujraj Singh, mookhtar.

in the main true, is I think beyond doubt. The witnesses Mahly (No. 30) and Dooka (No. 38) were very probably willing receivers of the stolen property, but their testimony is nevertheless of considerable weight, that of Mahly tending to confirm the confessions of the prisoners Nos. 10 and 11, and that of Dooka those of the prisoners Nos. 3 and 9. That the fragment of the bearer's pole, picked up in the *beparees'* camp by witness No. 7, fits exactly the broken pole found in the prisoner Jerkooa's house, is a significant circumstance. I do not think that any of the prisoners had any thought of committing murder, but at the same time the heavy stones thrown by them into camp being very formidable missiles, the prisoners are justly to be held responsible for the consequences of their act. I hold, therefore, that the prisoners Nos. 2, 3, 4, 5, 6, 7, 8, 9 are guilty of dacoity with murder, and that the prisoners Nos. 10 and 11 are guilty of receiving stolen property, knowing the same to have been obtained by dacoity. I accordingly have to recommend that the prisoners, Nos. 2 to 9 inclusive, be sentenced each to imprisonment for life with hard labor in irons in transportation, and that the prisoners, Nos. 10 and 11, be sentenced each to imprisonment for five years with hard labor in irons.

I may here note, for the information of the Court, that on the record it appears that Madho (No. 10) is the father of Jerkooa (No. 2) and Chytunoa (No. 11) and father-in-law of Chumroa (No. 4); also that Bhora (No. 3) and Jedha (No. 9) are brothers, and that Loorkooa (No. 5) and Chumra (No. 6) being themselves first cousins, are brothers-in-law of the said Nos. 3 and 9.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The evidence leaves no doubt of the guilt of the prisoners. The conviction, however, I think, should be precisely of the charges as laid in the indictment, that is, dacoity with murder and wounding against prisoners Nos. 2, 3, 4, 5, 6, 7, 8 and 9, and being accessory after the fact against prisoners Nos. 10 and 11. The latter could not be convicted of receiving the plundered property, not having been put upon their trial for that crime, but no more than accessoryship after the fact could be established against them. The evidence of Mahly proves, that they put down the rice at his door and in their confessions they declare, that they took the rice and left it there at Jerkooa's request and on his behalf.

I concur in the punishment proposed. Let sentence issue accordingly.

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PRESENT :
J. DUNBAR, Esq., Judge.

BOLAI KARIGUR, MOKIM KARIGUR, AND GOVERNMENT

versus

ZUMEER SHEIKH MOLLAH (No. 13,) NATHOO DHALLEE (No. 14,) SHOOKOOR SIRDAR CHOWKEEDAR (No. 15,) AND BAKUR SIRDAR CHOWKEEDAR (No. 16.)

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Case of
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SHEIKH and
others.

A sentence
of nine years'
imprisonment
in banishment,
passed by the
sessions judge
on a conviction
of highway robbery,
reduced to
seven years'
simple impris-
onment in
appeal.

CRIME CHARGED.—Prisoners, Nos. 13, 14 and 15, 1st count, highway robbery in attacking the prosecutors Mokim and Bolai Karigur and thereby rifling them of property valued at rupees 6-8-9 ; 2nd count, having in their possession property knowing it to have been acquired by the said highway robbery. Prisoner No. 16, 1st count, being an accessory after the fact ; 2nd count, privity to the said charge.

CRIME ESTABLISHED.—No. 13, highway robbery, and prisoners Nos. 14 and 15, knowingly receiving and keeping in their possession plundered property obtained by the said highway robbery, and prisoner No. 16, privity to highway robbery.

Committing Officer—Mr. C. F. Montressor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 31st August 1853.

Remarks by the sessions judge.—The prosecutors were weavers and were returning with the witnesses, who were of the same calling, from a market called Sookhpookhuria, a little after dark. As they approached their own village, they heard voices of persons who were nearing them behind. They called out to enquire who they were, and were told in reply, "their fathers." The use of this expression of defiance, coupled with the following party closing upon them quickly, alarmed those in advance, and some of them, without any delay, secreted their bundles in some standing paddy. The two prosecutors alone had not disposed of their bundles when they were overtaken by the prisoners. There was some opposition on the part of the prosecutors, but they were forcibly robbed of their property, which was carried off by some of the aggressors, but in the meanwhile, the prosecutors' companions engaged themselves in securing one of the foot-pads named Zumeer, whom they captured and conveyed to their village and made over to the custody of Bakur Sirdar, the cho wkeedar, prisoner No. 16. They charged their captive with highway robbery and he was to be taken to the thannah next

morning. Niamut Mundul, one of the witnesses for the prosecution, has sworn that shortly after the above had taken place, the prisoners Nos. 14 and 15 (Nathoo Dhallee and Shookoor Sirdar) went to him the same night and offered to return the whole of the plundered property to the prosecutors, to whom they were strangers, provided their comrade, Zumeer Sheikh, was released from confinement and Ameer Sheikh and Chand Mundul, two of the witnesses, have proved the restitution of the plundered property by Nathoo and Shookoor. When enquiry was made of Bakur, the chowkeedar, it appeared he had released Zumeer Sheikh, who had been given into his custody, and he gave no intimation at the thannah of the occurrence.

The police heard of the occurrence about a week after from some other chowkeedars, and on investigation the above facts transpired.

Prisoner No. 13 made no defence and called no witnesses. Prisoners Nos. 14 and 15 made no defence, but each called two witnesses to their characters. Prisoner No. 16 said in his defence, that having to seize some cattle-stealers, he made over Zumeer to the custody of the witness Niamut; Niamut repudiates the assertion; and the prisoner called no witnesses.

Sentence passed by the lower court.—Prisoners Nos. 13, 14 and 15 seven (7) years' imprisonment and two (2) in lieu of corporal punishment, being in aggregate nine (9) years each, with labor in irons in banishment; and prisoner No. 16 five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The conviction is good. With reference to all the circumstances of the case, and to the precedents in cases of highway robbery heretofore disposed of by this Court, I think a sentence of less severity than that passed against prisoners Nos. 13, 14 and 15 will suffice. The term of imprisonment, with labor in irons, is accordingly reduced to seven (7) years, to be undergone in the zillah jail, as it is desirable that all, acquainted with the prisoners and cognizant of the facts should have the opportunity of witnessing the punishment of the lawless act of which they have been guilty.

The Court see no reason to interfere with the sentence passed against prisoner No. 16.

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Case of
**ZUMEER
SHEIKH** and
others.

PRESENT :

A. J. M. MILLS, Esq., }
 AND } *Officiating Judges.*
 H. T. RAIKES, Esq., }

MUDDOOSOODUN MITTER AND GOVERNMENT

versus

GOBIND GHOSE (No. 22) AND MOHAMUD COORMEE
 (No. 23.)

MOORSHEEDABAD.
 1853.

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Case of
 GOBIND
 GHOSE and
 another.

Two pri-
 soners, charg-
 ed with wilful
 murder, were
 convicted of
 culpable ho-
 micide and
 sentenced to
 ten years' im-
 prisonment.

CRIME CHARGED.—1st count, wilful murder of Purreshnath Mitter, brother of the prosecutor, and 2nd count, accessories to the fact.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 20th August 1853.

Remarks by the sessions judge.—The prisoners pleaded *not guilty*.

The particulars of the case are as follows:—

The prosecutor, Muddoosoodun Mitter, declared that his brother, Purreshnath Mitter, the deceased, was employed in the service of Mr. J. Laruletta, at Kasseahdangah, as a watch in the indigo plantations. The prisoner Gobind Ghose had been there to graze his buffaloes, which the deceased seized and sent over to the factory. Upon this Mr. Laruletta sent for his servant Purreshnath, the deceased, and Gobind Ghose to the factory, and the next day the prosecutor heard that his brother had run away from the factory during the night. In the morning, the day after or the third day, four peadahs came from the factory by the order of their master, Mr. Laruletta, and told the prosecutor to produce his brother, who had absconded, or else they would plunder his house. At this time the prisoner Gobind came there and took away the peadahs with him to his house. Soon after this, one Sadoochurn Ghose came and told him that Mr. Laruletta's people had seized his brother and confined him in the house of Jadoo Singh of Nattoongram. Immediately after, one Mooleeram Chyen also came over to his (prosecutor's) house and desired him to make haste and go with him to see whether his brother was alive or dead by that time. Upon this the prosecutor hastened to the house of Jadoo Singh, and saw his brother dead, and his body kept erect with a rope tied round his neck. On his arrival there, those who were present ran away, except the prisoner Gobind Ghose, who remained there. The prosecutor also stated that the prisoner Mahomed had been to his house with the

peadahs ; that he did not see his brother beaten, but saw him when he was dead, with a rope tied round his neck. He stated that Gobind Ghose, Neetye, Joghee Ghose, Meherchand Burkundauze and Gokool beat and killed his brother. That ten days before the murder of his brother, the buffaloes were seized and sent over to the factory and it was reported and complained of by the owners of the buffaloes that the deceased had taken from them ten annas as a fine on account of each buffalo for grazing, and that out of that amount he had remitted six annas to the factory, keeping the remainder for himself. The deceased was forty years old, but in natural health. The prisoners had killed him by squeezing or pressing his neck, and as blood was coming out from the anus, he suspected a *lattee* had been forced up. The prosecutor heard from Mahomed Gokool and Meherchand that Tommy Sahib, the nephew of Mr. Larulettta, ordered the seizure of the deceased, or in case of failure his house to be *looted*. Once before, when the buffaloes of Gobind trespassed upon the indigo plantations, the deceased, after taking a fine, let go the animals. This fact might have been brought to the notice of his master by some one out of enmity, and the result had been the seizure of the deceased. The prisoner Gobind gave out that many fines had been paid to the deceased. Upon this Mr. Larulettta reprimanded the deceased, saying that he (the deceased) was not his (Mr. Larulettta's) master, that he should of his own accord levy such fines. It was his duty to seize the cattle trespassing on the indigo and send them over to him. The deceased had to receive rupees 50 on account of his salary, of which he was paid rupees 25 and the balance 25 was still due. The deceased had swollen testicles, but no other disease.

The witness Patassee Bewah stated in her evidence, that one day, at about 10 o'clock A. M., while she was at home, the deceased (Purresh Mitter) entered her house immediately after Gobind Ghose, Neetye Ghose, Joghee Ghose, Mahomed, Meherchand and Gokool, who had followed him, also entered the house. Seeing this she ran to Moteeram's house and told him what had happened and accompanied him to her house, but returned again to his house. Shortly after she heard that Purresh was murdered, and the peadahs fled away from her house. She did not see them beat the deceased, but she saw the body of the deceased when the darogah came to the spot, in the evening, to investigate the case. When the deceased entered the house, Mahomed, Meherchand and Gokool followed him and entered the house with *lattees* in their hands. She was not aware from what place they had chased him (the deceased) into her house. She heard Meherchand and Gokool using

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abusive language towards the deceased from the door of the house by which he entered, and saw Gobind sitting there.

The witness Jadoo Singh deposed, that on the 19th Jeyt, on his return home from the fields, he saw Gobind Ghose, Neetye Ghose, Joghee Ghose, Mahomed Peadah, Gokool and Meherchand talking inside his house, and on his entering the house, he saw Purreshnath Mitter dead, and his neck tied with a rope to a bamboo in the roof of the house. They were suspending the body when the deponent appeared. On his giving the alarm, Meherchand and Neetye placed a cloth on his face and prevented him from calling out. They had tied the neck of the deceased, and causing his body to be kept erect, they fled away. Joghee, Gobind and Gokool suspended the corpse, which was taken down when the darogah arrived, in the presence of the deponent.

The witness Mahomed Mundul deposed, that one day (date unknown,) at about 10 A. M., the deceased (Purresh Mitter,) while sitting near the house of Jadoo Singh under a *butt* tree, desired him to go and see if any peadahs were coming towards his house. The deponent was accordingly going to the house of the deceased, but seeing Mr. Laruletta's jowadar, named Kamoo, in the way, he returned and told the deceased that the jowadar had seen him. The deponent was going home when he saw the burkundauzes of Mr. Laruletta, by name Gokool Singh, Meherchand and Mahomed, Gobind Ghose, Neetye Ghose and Joghee Ghose run after the deceased to Jadoo Singh's house. Seeing this he went to his house, but afterwards heard from Jadoo that Purresh was murdered. When the deceased was followed by the above-named persons to the house of Jadoo, the deponent, in company with Moteeram Nundlall and others, went towards that house, but were prevented from entering it by Gokool, who told them to go away. In the evening the darogah came to the spot, when the deponent saw the body of the deceased with a rope (like the *sika* used by bangy-burdars when they carry water, or the rope used for suspending earthen pots, &c., in the houses of natives generally) tied round his neck. There were no other marks on the body and it is probable that these men, after murdering the deceased, tied the rope in that manner.

The witness Moteeram stated in his deposition, that one day when he was sitting in his own house, Patassee Bewah came to him and told him, that the factory people were committing an oppression in her house ; he accordingly accompanied her to her house and saw the deceased sitting inside the house, and Gokool, Meherchand, Mahomed, Neetye and Gobind outside. On his (the deponent's) telling them that they had no occasion to stay in the woman's house, and it was

better that they should go away, they then came and sat outside the house, and the deponent seeing this, went to his own house. Shortly after Jadoo came and told him, that Purresh was murdered ; the deponent and others then hastened towards the house and saw Meherchand and Gokool, with *lattees* in their hands, running away. He could not see any one else ; but he saw the body of the deceased in the house of Jadoo ; there were no marks on it. He suspected that the people he had named had killed Purresh, whose neck was tied with a rope to the *chupper*, the toes of his feet touching the ground. When he returned to his house from that of Jadoo's, he saw the prisoner Gobind Ghose smoking at his house, when the village mundul, Bhyrub Chowdree, came to his house and told him, that as Gobind and others had killed Purresh, he was not to let Gobind go ; he therefore arrested him. The deponent was not aware by whose order the deceased was killed. The deceased was employed in the service of Mr. Laruletta on a salary of rupees 6. When the deponent first went to Patassee's house, he saw the door was locked, and the deceased inside the house. The burkundauzes were then using abusive language to the deceased and telling him to come out of the house. The deceased from inside requested him at the time to inform his brother. He was sent for by Mr. Laruletta, because he used to receive 8 annas as fine from the *goalas*, but gave only 6 annas to his master, and kept 2 annas for himself. The deponent did not see blood coming out of the anus of the deceased. He had swollen testicles.

The witness Sadhoochurn gave his evidence to the effect, that one day in the month of Jeyt (he cannot remember the date,) when he was coming to his house from Ramnuggur, the deceased from inside the house of Jadoo Singh called out and told him to inform his brother, in order that the sahib's people might not mal-treat him. At that time Gokool, Meherchand, Mahomed, Gobind Ghose, Joghoo and Neetye, people of the Ramnuggur factory, were there in the house. The deponent accordingly informed the prosecutor, brother of the deceased, who told him to go, and he would follow. He heard a report on the way, that the sahib's people were running off after murdering Purresh. Upon this the deponent went to the river side and saw them on the other side of the river running away. The deponent then returned and went to Jadoo Singh's house, where he saw the body of Purresh, with a rope tied round his neck and kept erect, his back being towards the wall. When the deponent was called by the deceased, the sahib's people were then sitting outside the house and Purresh standing inside. Gokool, Meherchand

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and Mahomed had *lattees* in their hands at the time, and Gobind Ghose, Joghee and Neetye Ghose had small *lattees*.

The witness Nobin Mundul deposed, that one day in the month of Jeyt, at about 11 o'clock A.M., he saw the deceased sitting near the house of Jadoo Singh under a *butt-tree*, and, when he was about to start after smoking, the people on the part of the sahib of the Rampoor factory, named Gokool Mahomed and Meherchand and the goalas, Gobind Ghose Neetye Ghose and Joghee Ghose, ran after him, and he concealed himself in the house of Jadoo Singh, but those people remained there surrounding it. On seeing this, the deponent went to his house, but shortly after the villagers shouted out that the sahib's people had murdered Purresh and ran away. The deponent then ran to the place, but could not see any one, except Gobind Ghose, who was then going away, near the house of Moteeram, and whom he and Bhyrub Chowdree arrested and made over in charge of Moteeram. On going to the house of Jadoo Singh, the deponent saw the body of Purresh, with a *sica* (rope) tied round the neck and kept erect. He was dead. When the deceased entered the house, the deponent heard him say that the sahib's people would kill him and therefore information should be sent to the thannah. He saw the sahib's people enter the compound of Jadoo Singh's house, but did not see them enter the house. The people belonged to Tommy Sahib and John Sahib. Gokool, Meherchand, Mahomed and Neetye had *lattees* in their hands, and for fear of them the deponent and others could not enter the house. When Purresh called the deponent from inside the house, he heard the burkundauzes telling him, the deceased, to come out of the house and not remain concealed there. Upon this Purresh told them that he would not come out before the arrival of his brother and others. The deponent was not aware why Purresh fled away. He saw Meherchand and Gokool running away after crossing the river. Gobind Ghose was arrested by Bhyrub Chowdree and Moteeram. When the deponent saw the deceased in the house of Jadoo Singh, he had no clothing upon his body, nor were there marks on it.

The inquest held by the darogah was proved by the attesting witnesses.

The prisoner Gobind Ghose stated in his defence in the sessions court, that one day in the month of Jeyt, while he was grazing his buffaloes in a field, the servants of the Rampore factory, named Gokool and Meherchand, came and seized the cattle and took them to the factory. That he was an old man and could not say anything, but went quietly to his house. Eight days after

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he, in company with others, went to Messrs. Tommy and Laruletta, at the Rampore factory, and having respectfully requested them to release the animals, he was told by them that they would not be let off without a fine of rupees 15 being paid. The prisoner then gave rupees 3 and promised to pay rupees 12 afterwards. That subsequently Mohanund came to him for the money and he took him to the house of Moteeram, when he saw Gokool and Meherchand come to the house of Jadoo Singh for the purpose of seizing Purresh. Shortly after, the prisoner was arrested.

The prisoner Mohanund pleaded in his defence, that according to Mr. Tommy's instructions, he had been to Nuttoongram, for the purpose of seizing Gobind Ghose, and on his arrival there he saw the villagers had arrested him, and the prosecutor, on the plea of his brother's murder, apprehended the prisoner. That his witnesses knew that he had been to seize Gobind Ghose, who was near the house of Jadoo Singh.

From the evidence of the witnesses to the defence of the prisoners, nothing exculpatory was proved.

The law officer, who sat on the trial with me, declared that there was no proof to convict the prisoners of murder, and delivered his *futwa* to the effect, that although the prisoners deny the charge against them, and the witnesses do not depose to having seen the prisoners beat the deceased, and no marks of violence were visible on the body of the deceased, yet from the evidence of the civil surgeon, as also from that of the witnesses and from the circumstances of the case, he is of opinion that there is strong presumption that the prisoners were accessories to the culpable homicide of the deceased, inasmuch as it has been proved that from the effect of the beating, which was inflicted in a manner so as not to leave any marks of violence visible on the body, the deceased met his death, and in order to conceal the fact, they kept the body of the deceased suspended and tied with a rope round the neck in the house of Jadoo Singh; and that under these circumstances both the prisoners have rendered themselves liable to *tazeer*.

I do not concur in this finding.

It is impossible from the evidence to arrive at any distinct conclusion as to the manner in which the deceased met with his death, that is, what instrument caused it and by whom the fatal blow was given. There is evidence of previous disputes and ill-will, there is violent presumption of malice, there is full evidence to the fact of the deceased having been arrested and taken to the house of Mr. Laruletta, of his running away from fear of consequences, of his being pursued and hunted down by Laruletta's servants, of his flying for

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refuge to the house of Jadoo Singh, of their besieging the house armed with *lattees*, of their preventing others going into it or helping the deceased, and eventually of their inflicting such injuries upon his person as to cause his death, and afterwards, in order to escape from the consequences of their guilt, of their suspending the body by a rope round the neck, that it might be suspected that the deceased had hung himself. The deceased was also in the service of Mr. Laruleta, and had been in the habit of pounding stray cattle, and imposing fines upon their owners. One of those who had been so fined was the prisoner Gobind Ghose, and it is easy to believe that he was actuated by vindictive feelings in the share he took in the acts which led to the death of the deceased. From the statements of some of the witnesses, and from Dr. Kean's evidence, there is the strongest suspicion, almost amounting to a legal presumption, that great violence was applied to the testicles of the poor man, which were previously swollen from disease, and that an instrument may have been forced up the anus. The *actual* cause of death, however, still remains in doubt, though there is no doubt of the joint participation of the prisoners, and others with them, in the acts, which produced it. The crime, under the circumstances, appears to me to be murder, and I consider the prisoners guilty as accomplices, and would recommend them to be imprisoned for life with labor in irons.

The court has called upon the magistrate to explain why Mr. Laruleta's evidence in so serious a case was not taken.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and H. T. Raikes.)—We concur with the sessions judge in thinking that the fact of the deceased having been chased into Jadoo Singh's house by the prisoners and others, of their effecting an entrance therein with apparently hostile intentions towards him, and of his being found dead immediately on their departure with his neck tied with a rope to a bamboo in the roof of the house and his feet touching the ground, is completely borne out by the evidence. There is no evidence as to the kind of ill-treatment he received in the house, but the reasonable conclusion from the facts of the case is that he died from the effects of injuries inflicted on him.

It appears from the medical evidence, that the body exhibited no external marks of violence, but internally there was a great deal of inflammation in the cavity of the abdomen and the scrotum, and in the scrotum there was a great quantity of the small intestines and some dark fluid like blood in colour. It further appears from the same testimony, that the deceased must at this time have been afflicted with strangulated hernia, and that the violence he

received was either directed to the seat of the disease itself, or caused a sudden shock to the system, terminating fatally at once. In no other way can we reconcile the opinion of the medical officer, that strangulated hernia was the *cause of death*, with the fact of the deceased being able to reach the house of Jadoo Singh and dying so immediately afterwards. Such death could not have ensued in the natural course of the disease, and can only be accounted for, under the circumstances presumed by us. They will also account for the trickling of blood from the anus remarked upon by the sessions judge. Such might result from violence to the diseased intestine, whereas, had that appearance been caused by forcing an instrument upwards, it could scarcely have failed to leave traces, which would have attracted the notice of the surgeon at the *post-mortem* examination.

We do not, however, think that the crime, under the circumstances above stated, amounts to wilful murder. The deceased was a servant of Mr. Larulett he was at the time believed to have appropriated a portion of the fines he levied from the gowalas for cattle trespass, and his master sent his servants to seize him and bring him to the factory. The gowala, Gobind Ghose, (prisoner No. 22,) was no doubt vindictively disposed towards him, because the deceased had pounded his cattle and imposed fines upon him, but it is not shown that the other assailants bore him any ill-will; they were fellow-servants, and the presumption is that incensed at his not giving himself up, they ill-treated him, when they at last got into the house and laid hands on him. With no evidence to prove how the deed was committed, we cannot, on the facts above stated, ascribe to the prisoners an intent to take away life. Convicting the prisoners, therefore, of culpable homicide, we sentence them to ten (10) years' imprisonment each with labor and in irons.

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PRESENT :

J. DUNBAR, Esq., Judge,

AND

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus.

GUDADHUR KURMOKAR.

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The prisoner, convicted of perjury arising out of his attempt to decline to recognize a defendant whom he was brought up to identify, sentenced to one year's imprisonment.

CRIME CHARGED.—Perjury, in having, on the 23rd November 1852, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of Nuddea, that on the 20th of last Kartick, when four or six *dunds* of day were remaining, I saw Keshub Baboo, Nubbo Roy and Dwari Bhuttacharjea and (others) with about 250 club and spear-men enter the village from the North, and after plundering and wounding make egress to the South ; and in having, on the 31st August 1853, again, when confronted with the above-mentioned Dwari or Dwarkanath Bhuttacharjea, and questioned as to whether the said Bhuttacharjea was the person afore recognized by him, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the said magistrate of Nuddea, that the Dwari Bhuttacharjea, whose name I before gave in my evidence, I never saw and never recognized him, (and) I am not acquainted with Dwari Bhuttacharjea : such statements being contradictory of each other, on a point material to the issue of the case.

Committing Officer—Mr. C. F. Montresor, magistrate of zillah Nuddea.

Tried before Mr. J. C. Brown, sessions judge of zillah Nuddea, on the 2nd September 1853.

Remarks by the sessions judge.—The *futwa* of the law officer of this court convicts the prisoner of the crime charged in the calendar, to wit, perjury, and declares him liable to chastisement as a warning or example.

I do not think the crime of "wilful perjury" can be said to have been proved against the prisoner, seeing that his two statements were made nine months apart. He was in no way interested in the issue of the case in which he was made a witness. He is a poor, stupid, ignorant man, and could not be expected to remember for several months what he had said previously.

Besides, I am not satisfied with examinations taken by mohurirs in the foujdary courts.

The writer of an examination can very easily put in an expression or a name without intending any harm in a witness'

deposition, which, on being read over in a hurried manner to the deponent, he may not detect the error, and it may be brought against him afterwards.

Had the prisoner been a witness in a commitment, and having sworn to and pointed out an individual before the magistrate, afterwards before the sessions judge had denied what he had sworn to, in such a case he might be considered guilty of wilful perjury, but under the circumstances of this case, in which the prisoner after having made a statement nine months previously, was suddenly shown a man, and asked if he could swear to him, denied, I am not satisfied that the crime of perjury has been wilfully committed and accordingly recommend a sentence of acquittal being passed.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.)—*Mr. J. Dunbar.*—It is clear on the evidence, that in his first deposition on oath, the prisoner did name Dwari Bhuttacharjea and that in his second deposition, also on oath, he said he did not know Dwari Bhuttacharjea. His evidence is clearly false, either for or against that person; if he did not know him, he should not have named him; if he did know him, he should have adhered to his statement. The depositions were taken in the presence of the magistrate, and I find no excuse for the prisoner in that suggested by the sessions judge, namely, the possible shortness of his memory. I would convict and sentence the prisoner to imprisonment with labor for one year.

Mr. H. T. Raikes.—I concur in this conviction and in the sentence proposed by Mr. Dunbar.

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PRESENT :

A. J. M. MILLS, Esq., }
 AND } *Officiating Judges.*
 H. T. RAIKES, Esq., }

GOVERNMENT AND MODHOOSOODUN MITTER
versus

JOGHEE GHOSE (No. 1) AND NEETYE GHOSE (No. 2.)

CRIME CHARGED.—1st count, with the wilful murder of Purreshnath Mitter, brother of the prosecutor, and 2nd count, with having been accessaries to the fact.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorschedabad.

Tried before Mr. D. I. Money, sessions judge of Moorschedabad, on the 19th September 1853.

Remarks by the sessions judge.—The prisoners pleaded *not guilty*.

The prisoners were implicated in the case of murder, which was tried by me in August last, and referred for final orders of the Court of Nizamut Adawlut, before whom it is still pending : the prisoners evaded arrest at the time.

As the particulars of the case are fully recorded in my letter No. 247, dated 28th ultimo, now before the Court, I beg to refer to the same.

The prosecutor has deposed against the prisoners as accomplices in the murder of his brother Purreshnath Mitter, and the following evidence was taken in the sessions court :—

The witness Patassee Bewa states, that one day, about 11 A. M., (she does not recollect the month and date,) the prisoners Joghee and Neetye, in company with others, chased Purreshnath Mitter (the deceased) into her house and murdered him there, but she did not witness the murder. The evidence given by this witness in the same case against the other prisoners was read to and acknowledged by her.

The witness Jadoo Singh states, that one day at 11 A. M., when he came to his house, he saw these two prisoners, in company with others, suspending the body of Purreshnath Mitter, the deceased, with a rope round his neck in his house, and on giving the alarm, Meherchand and the prisoner Neetye placed a cloth over his mouth to prevent him from calling out, and then ran away. Both these prisoners had *lattees* in their hands at the time. The evidence given by this witness in the same case against the other prisoners was read to and acknowledged by him.

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 —————
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 Case of
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 and another.
 Two pri-
 soners, convict-
 ed of aiding &
 abetting in wil-
 ful murder,
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The witness Mohanund states, that one day (date unknown) he saw these two prisoners, with others, run after Purreshnath Mitter, the deceased, into the house of Jadoo Singh, from under a *butta* tree that stands near that house. Soon after that he heard they had ran away after murdering Purresh. The deponent saw both the prisoners with *lattees* in their hands at the time. The evidence given by this witness in the same case against the other prisoners was read to and acknowledged by him.

The witness Motteeram Mundul states, that one day Patassee Bewa came and informed him, that peadahs had hunted down Purresh Mitter, the deceased, into her house : he immediately accompanied her there and saw Purresh sitting inside the house, and the prisoners Joghee and Neetye with others at the door of the house. He, the deponent, forbade them at the time to beat the deceased, but they told him to go away, and he came back to his house, but shortly after he heard Jadoo Singh call out and went there again and saw Purresh Mitter murdered, and the prisoners, in company with others, running away. He and others followed them, but could not arrest them. The evidence given by this witness in the same case against the other prisoners was read to and acknowledged by him.

The witness Sadoochurn gave his evidence to the following effect :—that one day, while he was passing near the house of Jadoo Singh towards his own house, he saw the prisoners Joghee and Neetye and others sitting there, surrounding the deceased, Purresh Mitter, who desired him to give information to his brother, and he accordingly went and told his brother. Shortly after he heard in the way that Purresh was murdered and saw the murderers running away. He saw the prisoners with *lattees* in their hands, when they were in the house of Jadoo Singh surrounding Purresh. The evidence given by this witness in the same case against the other prisoners was read to and acknowledged by him.

The prisoner Joghee Ghose pleaded in his defence, that he was not present at the place when the murder occurred, but in the *bathan* of Omerpore, and prayed that the evidence of his witnesses might be taken.

The prisoner Neetye Ghose stated in his defence, that he was not present at the scene of the occurrence, but had been five or six days before the expiration of the month of Bysakh to Koomrapore, where he was all the time. He prayed that the case might be tried after taking the evidence of his witnesses.

From the evidence of the witnesses to the defence of the prisoners nothing exculpatory was proved.

The law officer, who sat on the trial with me, declared that there was no proof to convict the prisoners of murder and delivered his *futwa* to the effect, that although the prisoners

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Case of
JOGHEE
GHOSE
and another.

deny the charge against them and the witnesses do not deposite to having seen the prisoners beat the deceased, and no marks of violence were visible on the body of the deceased, yet, from the evidence of the civil surgeon, as also from that of the witnesses and from the circumstances of the case, he is of opinion that there is strong presumption that the prisoners were accessories to the culpable homicide of the deceased, inasmuch as it has been proved, that from the effect of the beating, which was inflicted in a manner so as not to leave any marks of violence visible on the body, the deceased met his death, and in order to conceal the fact, they kept the body of the deceased suspended and tied with a rope round the neck in the house of Jadoo Singh, and that under these circumstances both the prisoners have rendered themselves liable to *tazeer*.

I do not concur in this finding.

I would recommend the same punishment to be inflicted upon these prisoners, as accomplices in the murder of Purreshnath Mitter, as I recommended in the case already reported for the other accomplices, *viz.*, that they should be imprisoned for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. J. M. Mills and H. T. Raikes.)—We have already recorded our opinion on this case, on the 20th instant, on the trial of Gobind Ghose and Mohanund Coonwur. The evidence against the prisoners now before us is sufficient to convict them also of being present, aiding and abetting in the culpable homicide of Purreshnath Mitter, and we sentence them to ten (10) years' imprisonment each with labor in irons.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*GOVERNMENT AND EDARUT KHAN
*versus*RUGHOO MUNDUL (No. 1,) ANUND MUNDUL
(No. 2,) AND DUKHUN MUNDUL (No. 3.)

CRIME CHARGED.—Culpable homicide of Nujo Khan, brother of Edarut Khan, prosecutor.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. G. C. S. Chapman, deputy magistrate of Deoghur.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 31st August 1853.

Remarks by the sessions judge.—As the deceased and witness No. 1, were returning home from their day's work on the evening of the 13th May last, they met the prisoners Nos. 1 and 2, who demanded from the latter some pice that was owing to prisoner No. 2. A scuffle ensued, when prisoner No. 1 appears to have been laid hold of and detained. The prisoner No. 2 ran home and obtained the assistance of prisoner No. 3, with whom he returned to the village, where the deceased was residing and where prisoner No. 1 was under restraint, and there they all three set upon the deceased and beat him so severely that he died from the effects four days afterwards. Six eye-witnesses depose to the fact of the assault by the three prisoners, about one *puhur* of the night, and state that the deceased lingered in a state of insensibility from that time to the period of his demise.

The native doctor stationed at Deoghur, for whose attendance I was obliged to postpone the case twenty-five days, examined the body and declared that death was caused by the beating, which he considered to have been inflicted by the fists.

The prisoners are three brothers. Nos. 1, and 2 in the mofussil and before the magistrate admitted that they had a dispute with the deceased and witness No. 1, on the evening in question, when blows were exchanged on both sides, and that the former was kept in durance and ill-treated, while the latter went home to procure assistance for his rescue, which was achieved without any further alteration.

Prisoner No. 3 supported the defence of his two brothers.

In this court they all pleaded *not guilty* and repeated, without any material difference, the statements they had previously made.

BEERBHOOM.

1853.

October 22.

Case of
RUGHOO
MUNDUL and
others.

Two prisoners, convicted of culpable homicide, sentenced to seven years' imprisonment, and another to five years' imprisonment by the sessions judge. Appeal rejected.

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Case of
RUGHOO
MUNDUL and
others.

The witnesses for the defence knew nothing at all about the matter.

The jury, with whose assistance I tried this case, brought in a verdict of *guilty* against all three prisoners, and concurring therewith, I convict them of the crime of culpable homicide, and sentence prisoners Nos. 1 and 2 to seven (7) years' imprisonment, and prisoner No. 3 to five (5) years' imprisonment, all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—The facts of this case are set forth in the sessions judge's remarks on the trial. The assault was openly committed in the presence of eye-witnesses, and the medical evidence clearly establishes that death ensued from some such violence as these witnesses depose to having seen inflicted on the deceased.

The prisoners in their appeal aver that the deceased and his friends were the aggressors and attribute his death to disease, but there is the clearest proof of their guilt, and I see no reasons for interference with the order of the sessions judge.

PRESENT :

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND BISSOODESS PUROHIT
versus

MODHOO ROY.

WEST BURD-

WAN.

1853.

October 22.

Case of
MODHOO
Roy.

Prisoner convicted of dacoity attended with plunder and sentenced by the sessions judge to twelve years' imprisonment. In appeal the prisoner was held to be guilty of attempt at theft and sentenced to one year's imprisonment.

CRIME CHARGED.—Dacoity in the house of Bissoodess Purohit, on the night of the 6th May, and plundering therefrom property to the value of rupees 7.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor Bissoodess Purohit and plundering therefrom property to the value of rupees 7.

Committing Officer—Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbettah, West Burdwan.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 9th August 1853.

Remarks by the sessions judge.—The prisoner was seized in the act by the prosecutor, when the rest of the dacoits ran away and were *heard* going off by various witnesses, though it did not appear that any one *saw* them, as the night was dark and *mussals* had not been lighted. The prosecutor's statements, in regard to what happened when he seized the prisoner, were discrepant. Before the sessions court and the deputy magistrate, he affirmed, that the slight wounds found on the prisoner's arm and back were made by a sword which the prisoner had in his hand, while they were struggling

together, but in the mofussil he declared, that he had inflicted the wounds upon the prisoner himself, after wresting the sword from his grasp, because he could not otherwise over-awe and secure him. The nature of the wounds, all merely skin-deep and about the same part of the body, induced me to think that the prosecutor had himself wounded the prisoner with his own sword unnecessarily, and through mere cruelty after he had been secured, but there was no distinct proof of such having been the case. As another sword was found in the compound of the *baree*, and the *pooras* of *dhan*, &c., which had been removed to a *bagaun*, or *tope*, about three *russees* off, before the prisoner was seized, were of considerable weight, it was pretty clear that other persons must have been with him, and that there could be no doubt of the case being one of dacoity, though, as the *kirkee* door happened to be open, violent entrance was not made.

The confessions made by the prisoner in the mofussil and before the deputy magistrate appeared to have been voluntary, and were sufficiently proved, and his defence, which was that he had been seized, beaten and falsely accused by the prosecutor and others, in consequence of something that their women had said of his conduct towards them at a marriage, was not supported by any evidence and disproved by that of the prosecution.

Such being the case, and as the rest of the circumstantial evidence was clear and distinct, I consider the crime charged fully and legally proved against the prisoner, and convicted and sentenced him as noted.

As the evidence disclosed the fact, that the jemadar of the *phandee* of Teleesaer, with the ghutwal and their subordinates, were in the habit of making their rounds *in a body*, I at the same time directed that the folly and mischief of such a practice should be brought to the notice of the deputy magistrate, with a view to its prohibition in future.

The swords were confiscated, and the property consisting of five *pooras* of paddy and rice, which could not conveniently be brought to the sessions court, was ordered to be restored to the prosecutor, through the subordinate authorities.

Sentence passed by the lower court.—Ten (10) years' imprisonment with labor in irons in banishment, and two (2) years in lieu of stripes—total twelve (12) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—There is no sufficient proof of dacoity. I convict the prisoner of an attempt to commit theft in the prosecutor's house, in the night time, and sentence him to one (1) year's imprisonment with labor in irons from the date of his conviction by the sessions judge.

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October 22.
Case of
MOHOO
ROY.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT
versus
CANOO KURMOKAR.

DACCA.
—
1853.
October 24.
Case of
CANOO
KURMOKAR.
Prisoner,
convicted of
perjury, sen-
tenced to
five years' im-
prisonment.
Appeal re-
jected.

CRIME CHARGED.—Perjury, in having, on the 18th March 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Manickgunge, "that owing to Musst. Gourmonee's having connection with Akool Kurmokar, she was pregnant for four or five months, and that to cause abortion Akool Kurmokar by Ramcoomar Bhooemally, two or three days before the end of Poos, shortly before the evening, called the defendant Musst. Chundra; that he saw Akool, Ramcoomar and others planning the manner in which the medicine for causing the abortion should be given, and in the evening Musst. Gourmonee was lying in a restless state in the verandah of Akool Kurmokar's house, and that she became senseless at 10 p. m., and her body was covered with cloth and the defendants were there making a noise," and in having, on the 3rd June 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the commissioner with powers of sessions judge at Dacca, after giving his evidence to the same effect as in the criminal court, in answer to a question of the defendant Ramdooral Biswas, stated that he had never seen or heard the above circumstances, but had said so by the orders of the thannah darogah, and that he went to Furreedpore to present a petition: such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.
Committing Officer—Mr. C. W. Mackillop, officiating magistrate of Dacca.

Tried before Mr. C. T. Davidson, officiating commissioner with powers of a sessions judge, Dacca, on the 16th August 1853.

Remarks by the officiating commissioner with powers of a sessions judge.—The prisoner is charged with perjury. The circumstances of the case are as follows:—

The prisoner, on the 18th of March last, deposed on solemn declaration taken instead of an oath, before the deputy magistrate of Manickgunge, that one day towards the end of Poos last, he saw Akool Kurmokar, Ramcoomar and Musst. Chundra (these persons were tried and acquitted by this court in June last) planning the administration of drugs to Musst.

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October 24.
Case of
CANOO
KURMOKAR.

Gourmonee, who was with child by the former, to procure abortion ; that in the evening he saw Musst. Gourmonee lying in a restless state in the verandah of Akool Kurmokar's house, and that she became senseless, and that her body was covered with a cloth, &c. On the 3rd of June following, the prisoner again deposed to the same purport before this court, but on being questioned by the prisoners, he declared in reply to a question put by one of them (Ramdoolee Biswas), that he had never seen or heard the circumstances above related, and that he had been induced by the darogah to state what he had done. On this the prisoner was directed by this court to be committed for perjury. His deposition, taken on the 18th March, before the deputy magistrate, and that before this court of the 3rd June, have been both duly attested. The prisoner pleads *guilty*, and urges that he was mal-treated by the police. He has called witnesses in support of this plea, and they speak to the prisoners having been ill-used by those officers, but I consider this defence entirely inadmissible and cannot exculpate him for the deliberate perjury committed before this court ; besides which my impression is, that the statement which he first made, and which he denied on a question put by one of the prisoners then under trial, was in accordance with the facts of the case, and that he departed from it with the object of screening the prisoners. The *futwa* of the law officer convicts the prisoner of the crime charged, in which finding I concurred, and have sentenced him to five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—I concur in the view of the case taken by the officiating commissioner. The prisoner in his petition alleges that it was all along his intention to inform the presiding judge, that he had been compelled by the darogah to give false evidence, but he cannot well expect that this statement should be credited, as instead of at once declaring how he had been led to do wrong, he entered into a detailed statement of conversation and circumstances relative to the charge, all tending to criminate the prisoners. His subsequent denial was no doubt meant to get them out of the scrape and it is not improbable that the line of defence and the evidence necessary to support it were settled beforehand. The sentence is confirmed.

PRESENT:

SIR R. BARLOW, BART.,
 AND
 J. DUNBAR, Esq., } *Judges.*

GOVERNMENT PLEADER

versus

MUSST. PARBUTTEA (No. 1) AND MUSST.
 LUGGUN (No. 2*.)

SARUN.

1853.

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Case of
 MUSST. PAR-
 BUTTEA and
 another.

The pri-
 soner was
 charged with
 procuring a
 abortion, but as
 it was proved
 that the child
 was born alive,
 the sessions
 judge found
 her guilty of
 attempting to
 procure a
 abortion, and
 referring the
 case, as he
 differed from
 the law officer,
 he recommend-
 ed a sentence
 of six months'
 imprisonment.
 The Court con-
 curred in this
 finding and
 proposed sen-
 tence.

CRIME CHARGED.—Procuring abortion.
 Committing Officer—Mr W. F. McDonell, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 19th September 1853.

Remarks by the sessions judge.—I refer this case, because I dissent with the *futwa*, which convicts the prisoner Parbuttea of procuring abortion, whereas I consider, that at the utmost, she is guilty only of attempting to commit the above crime.

Both this prisoner Parbuttea and a woman named Luggun (tried with her but acquitted) were committed on a charge of procuring abortion, and it would seem from the admissions made by the former, both to the magistrate and on her trial, that they really tried and intended to have committed this crime. The statement of the officiating civil surgeon (Dr. Bose,) however, shows clearly that they failed in effecting their object, and under these circumstances, I cannot but hold that the charge upon which the moulvee convicts has not been established.

From the inquiries made in the case, it appears that the husband of the prisoner Parbuttea left her some three years ago, and that having gone to see some of her relatives, she returned from thence *enceinte*, and that being annoyed by the remarks, &c., made on the subject, she consented, or was induced by Luggun, to take some drugs, and also to allow the latter to apply pressure to her stomach, in order to destroy or remove the *fetus* in her womb. The doctor, however, states most clearly, that abortion did not take place; that the child was born at the full time, perfectly formed, healthy and strong, but that it died afterwards either from accident or from violence of some kind applied to it, of which, of course, if there was any proof, the case would have amounted to murder.

Three witnesses speak to the fact of their having seen Luggun with the prisoner, and one of them deposes to having seen her rubbing her stomach. One of them again, Musst.

* Acquitted by the lower court.

Gouree (mother-in-law to Parbuttea,) also states, that after the child was born, she saw it lying on the floor alive and breathing, when she left the place and went home, and that she afterwards saw the two women carrying it away to conceal it, and it was in fact, from information given by her, that the matter was brought to the notice of the police.

I must say that I entertain strong suspicions that the child was unfairly dealt with, but there is no evidence to show what was the real and immediate cause of its death, and the question as regards this case is, has the charge made been established against either of the prisoners? Luggun denies having had any thing to do with the case, but though there are suspicions against her, as it appears to be usual sometimes to rub and press the stomach of a pregnant woman, in order to facilitate and ease the pangs of labor (and there is no proof of her having administered any drugs,) I do not see that there are sufficient grounds to convict her in this case, wherefore I have, in concurrence with the *futwa*, directed her to be released. The case of Parbuttea, however, differs, because although it appears from the doctor's evidence that the crime charged was never actually consummated, she herself admits that she was consenting and endeavoring to bring it to pass, and I cannot therefore hold her altogether guiltless. As the moulvee, however, convicts her of the more serious charge, it becomes my duty to refer the case for the orders of your Court, and I accordingly forward the proceedings, recommending, in the event of their coinciding in the view I have taken, that the prisoner Parbuttea be sentenced to imprisonment without labor for six (6) months and to pay a fine of rupees 20 in one month, from the 19th September, or in default to labor until the fine be paid or the term of her sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. J. Dunbar)—*Sir R. Barlow.*—The prisoner is charged with procuring abortion. There is no doubt that the child was alive after its birth and that it was born at its full time. It died shortly afterwards; the cause, however, is by no means clearly shown. The prisoner confessed that she took some drugs from Musst. Luggun for the purpose of procuring abortion, but not willingly.

I concur with the sessions judge in the opinion, that the prisoner must be held responsible for the attempt, though the crime was not completed, and would sentence her as recommended by the sessions judge.

Mr. J. Dunbar.—I concur in this view of the case taken by the sessions judge and in the sentence proposed.

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Case of
MUSST. PAR-
BUTTEA and
another.

PRESENT:

A. J. M. MILLS, Esq., }
 AND } Officiating Judges.
 H. T. RAIKES, Esq., }

GOVERNMENT AND MUSST. JAMINA

versus

SUMMEEROODEEN (No. 14,) KUMMUROODEEN (No. 15,) OOTAROODEEN (No. 16,) AND KHYROOLLA (No. 17.)

BACKER-GUNGE.

1853.

October 24.

Case of
SUMMEER-
OODEEN and
others.

The pri-
soners were
convicted of
culpable homi-
cide, having
been the ori-
ginal aggres-
sors in the
quarrel which
led to the death
of the deceased
and were sen-
tenced to dif-
ferent terms of
imprisonment.

CRIME CHARGED.—Prisoner No. 14, wilful murder of Mohuddy; prisoners Nos. 15 to 17, accomplices in the said murder.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 1st October 1853.

Remarks by the sessions judge.—A difference of opinion between the law officer and myself, as regards the crime proved against the prisoners, necessitates the present reference to the superior Court.

The facts of the case, as established by the evidence, are that an altercation took place between the deceased and the prisoners, the latter of whom are four brothers, about a small sum claimed by the deceased from the prisoners. To abuse, followed blows, and it would seem that the deceased and the prisoners were once parted without injury to either party; but the deceased with a stick in his hand again commenced the quarrel, when the prisoners, each arming himself with a bamboo, picked upon the spot, applied them on the deceased. The blows of the prisoners Nos. 15, 16 and 17 fell upon the body of the deceased, and he was about to make his retreat, when a heavy blow from the prisoner Summeeroodeen fell upon his head and fractured the skull. The prisoners then retired to their own house, at the very threshold of which the affair occurred, and the witnesses Nos. 1, 2, 3, 5 and 6 took up the wounded man and carried him to his house, where he died the same night, having been insensible and speechless from the moment he received the blow.

Six eye-witnesses have deposed to the occurrence as above described.

The defence of all four prisoners taken the next day before the darogah was, that Mohuddy and they had had a quarrel about a little money, and after much abuse on both

sides, which was followed by a scuffle, the witness Dowlut joining in the fray and intending a blow against Summeeroodeen, it missed him and lit upon the deceased Mohuddy. In support of this defence all four prisoners named the same witnesses, and of them two* are the chief witnesses for the prosecution. Before the magistrate the prisoners made the same statement, but at the sessions their defence is somewhat different. Here they say, that while they were passing the house of the deceased on the way to their own house, the deceased, together with nearly all the witnesses for the prosecution, including the two named by themselves at the thannah, set upon the prisoners, who all made their escape, but Summeeroodeen and he being laid hold of by Mohuddy was struggling with him, when Dowlut aimed a blow at Summeeroodeen, but it missed him and fell upon the head of Mohuddy.

Some of the witnesses named by them do, in some degree, support the statement, but those whom the prisoners first named as their witnesses, and who are their own relatives, and who were beyond all doubt eye-witnesses of the affair, do not give such a version of it.

The law officer finds Summeeroodeen guilty of the wilful murder, and the prisoners Nos. 15, 16 and 17, accomplices in the same, and declares them liable to the sentence of *deyut*.

Agreeing in the conviction of the prisoner No. 14, I disagree as to the crime proved against him. The parties had evidently abused each other, till the blood of both boiled over. Once they had been parted, (see the evidence of the prosecutrix and witness No. 1, Dowlut;) when the deceased renewed the fight, he struck the first blow, and though it was without doubt highly criminal in prisoner No. 14 to make use of such a formidable club, as that with which he split the head of the deceased with one blow, there was nothing of malice or of pre-meditation in the act to constitute it wilful murder. He is in my opinion guilty of culpable homicide, and a sentence of five or seven years will simply suffice. As regards the three other prisoners, I hardly see that any crime attaches to them. They struck but one blow each, and that was provoked. They were first assaulted by the deceased, and if they picked up the first stick that came in their way and used it in their defence, they are not to blame. They ought therefore in my opinion to be acquitted altogether.

Remarks by the Nizamut Adawlut.—(Present : Messrs. Mills and Raikes.)—We concur in the opinion with the sessions judge, that the crime proved against the prisoners amounts, under the circumstances of the case, to culpable homicide. It is in

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Case of
SUMMEER-
ODEEN
and others.

* No. 3, Suddeeroodeen ; No. 5, Sulimooddeen.

706 CASES IN THE NIZAMUT ADAWLUT.

1853.

October 21.

Case of
SUMMEER-
OODEEN and
others.

evidence that the prisoners first laid hold of the deceased and pulled him some distance from his house ; that the deceased when released, in anger took up a split bamboo and assaulted the prisoners ; and that thereupon the prisoners Nos. 15, 16 and 17, each picked up a bamboo, and prisoner No. 14 a heavy piece of wood, and struck the deceased, the prisoner No. 14 felling him to the ground with a fractured skull, which caused his death the same night. The prisoners were clearly the aggressors in the first instance, and we cannot consider their acts to have been justified on the plea of self-defence. There was no formidable weapon in the hands of the deceased, and those with which they retaliated on him were, in their nature, dangerous, while the prisoners were four to one, and could not have apprehended much personal injury to themselves. We sentence the prisoner No. 14 to five (5) years' imprisonment with labor, and the prisoners Nos. 15, 16 and 17, to three (3) years' imprisonment each with labor, if not redeemed by the payment of a fine of rupees (50) each within one month, and in default of payment to labor until the fine be paid or the time of sentence expire.

PRESENT:

A. J. M. MILLS, Esq., }
 AND } Officiating Judges.
 H. T. RAIKES, Esq., }

GOVERNMENT AND ABDUOL KADIR
versus

SHEIKH RAHAMUTOOLLAH ALIAS RAHEMO.

CRIME CHARGED.—With the wilful murder of Mahomed Abid.

Committing Officer—Mr. R. P. Harrison, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 19th September 1853.

Remarks by the sessions judge.—It is recorded in evidence, that at about 12 o'clock on the night of Monday the 5th September last, when the deceased, Mahomed Abid, was about to close the doors of the Jooma Musjid in the town of Cuttack, he directed the prisoner Sheikh Rahamutoollah alias Rahemo, between whom and the deceased's family Abdool Kadir and others there existed a quarrel regarding the musjid, to leave the musjid, and that on his refusing to do so, asserting his right to the musjid, a scuffle ensued, in which they both fell on the ground, and while struggling together, the prisoner stabbed the deceased with a common knife, which was suspended by a string from his neck, and which he was in the habit of carrying about with him, and on both parties calling out for help, witnesses Nos. 1, 2 and 3, who were in a different part of the musjid, and the police jemadar, witness No. 4, with some burkundauzes who were passing by at the time, hastened to the spot and found the deceased holding the prisoner by the legs and blood flowing from his body. The jemadar then disarmed the prisoner of the knife and took him into custody, and forwarded Mahomed Abid to the jail hospital, where he died of his wounds on the night of the 8th September.

Witnesses Nos. 1 to 4 deposed to the above facts, as likewise did Mahomed Abid before the deputy magistrate, prior to his decease.

From the evidence of the officiating civil surgeon, it appears that the deceased received in all eleven wounds or cuts on various parts of his body, but that which penetrated the cavity of the abdomen and which was the cause of his death was the only serious one.

The prisoner, in his examination before the police, stated, that the deceased accosted him, while he was sitting in the

CUTTACK.

1853.

October 25.

Case of
SHEIKH RA-
HAMUTOOL-
LAH alias
RAHEMO.

The prisoner stabbed the deceased in a scuffle arising out of a previous quarrel, and was convicted of culpable homicide and sentenced to ten years' imprisonment. The law officer had convicted of wilful murder, but held *kissas* to be barred, doubt being entertained as to the intention of the prisoner to kill the deceased.

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October 25.
Case of
**SHEIKH RA-
HAMUTOOL-
LAH alias
RAHEMO.**

musjid, and directed him to leave it; and that on his telling him not to approach him, the deceased seized his stick from his hand, closed with him, threw him down on the ground, injuring his head in the fall, and mounted on his chest and was throttling him, when he, in self-defence, drew his knife and flourished it about and might have struck the deceased with it. But before the magistrate he denied having wounded the deceased, though he admitted that the scuffle, as above described, took place between them.

Before this court, Sheikh Rahamutoollah pleaded *not guilty* to the charge, and stated that Abdool Kadir, the plaintiff, Meer Aleem and the deceased were always committing all sorts of oppression towards him, and that on his complaining against them to the magistrate, they had been bound down in recognizances to keep the peace and abstain from molesting him.

The law officer convicts the prisoner Sheikh Rahamutoollah of the crime charged, but entertaining doubts as to intention of the prisoner to kill the deceased, from the circumstance of the deceased having been found holding him by the feet, he declares *kissas* or capital punishment to be barred.

From the above verdict I dissent. The prisoner Rahamutoollah was sitting in the musjid, interfering with no one, when the deceased went up to him and attempted forcibly to expel him from the musjid, and after seizing his stick from his hand, closed and scuffled with him, when both parties fell to the ground, and the prisoner to defend himself drew the knife, he always carried about his person, and wounded the deceased. It is in no way established that the prisoner designedly or intentionally killed the deceased. I therefore would convict the prisoner of culpable homicide, and under all the circumstances of the case, sentence him to ten (10) years' imprisonment with labor in irons, in the zillah jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and H. T. Raikes).—The use of the knife was clearly intentional; the question is whether the prisoner used it in self-defence or unnecessarily.

The witnesses examined could give no clear account of what took place during the scuffle, the place was dark and their attention does not appear to have been directed to the parties till the close of it. We are, therefore, left to draw our inferences of the truth from the statements of the accusers and the prisoner.

The deceased said he wrested a stick from the prisoner, who appeared about to assault him, and then closed with him; the prisoner then drew his knife and stabbed him in the abdomen and other parts of the body, but no questions were put to him as to the manner in which these wounds were received.

The prisoner, on the other hand, when first apprehended, stated, that deceased threw him down with considerable violence and attempted to throttle him, that he then drew his knife and flourished it about and might have wounded the deceased.

There is no doubt animosity existed on both sides, and there are good grounds to believe the struggle was of longer duration than admitted by the deceased, but there is no reason to infer such malice on his part as would justify any belief that he would have attempted the prisoner's life, even if he had mastered him in the struggle. The most rational conclusion seems to be, that the prisoner was overpowered and drew his knife, and inflicted several trivial wounds on the deceased, before he gave one, which induced deceased to loosen his hold of him.

We are of opinion, that as assistance was at hand, the prisoner had no real cause for believing his life to be in danger, and therefore his use of the knife must be rather attributed to his own angry feelings towards the deceased than to any imminent fear for his own life, but we see no reason to infer that he had any deliberate intention of killing the deceased.

We, therefore, convict him of culpable homicide, and, as proposed by the sessions judge, sentence him to ten years' imprisonment with labor in irons.

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Case of
SHEIKH RA-
HAMUTOOL-
LAH alias
RAHEMO.

PRESENT.

A. J. M. MILLS, Esq., }
 AND } Officiating Judges.
 H. T. RAIKES, Esq., }

GOVERNMENT

versus

MUDHOO PANDAH.

CUTTACK.

1853.

October 25.

Case of

MUDHOO

PANDAH.

The prisoner, irritated at being prohibited from cohabiting with a prostitute, entered the house where she lived, and with a sword cut down and killed the bawd and another woman and wounded a man and two other women. He was convicted of wilful murder and sentenced capitally.

CRIME CHARGED.—1st count, wilful murder of Musst. Narainee Baee; 2nd count, wilful murder of Musst. Shamee Baee; 3rd count, wounding Musst. Tara, with intent to murder the said Tara; 4th count, wounding Musst. Jushnee, with intent to murder the said Jushnee; 5th count, wounding Kishen Sahoo, with intent to murder the said Kishen Sahoo.

Committing Officer—Mr. R. P. Harrison, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 16th September 1853.

Remarks by the sessions judge.—The particulars of the case as they appeared at the trial are as follows:—

It is stated that about eighteen months previous to the occurrence, the prisoner Mudhoo Pandah conceived a lust after Chando Baee, a prostitute, in the town of Cuttack, and desired to cohabit with her, but Narainee Baee, the bawd, who kept the house of ill-fame in which the said Chando lived, prohibited Chando's acceding to his wishes, on the plea that he was a brahmin and a neighbour, and that it would give great offence to his parents, and moreover he had no money. That in consequence thereof, he bore enmity towards Narainee, and on different occasions set fire to her house, and between the hours of 7 and 8 o'clock p.m., on the night of Wednesday, the 3rd of August 1853, proceeded to her house armed with a sword and bill, where he first met Tara Baee (witness No. 1) setting at the sunder or principal entrance, and as she, after ascertaining who he was, was hastening into the house, he struck a blow at her head with his sword, which fortunately partly fell on the lintel of the door, and only partly lighted on the back of the head and neck of Tara, inflicting a wound, which, under other circumstances, would, in all probability, have caused her death. Secondly, the prisoner having followed Tara into the court-yard, went up to Jushnee Baee, who was sitting talking to a child in the verandah of one of the huts, and slashing her right and left with his sword, all but severed her right arm at the elbow joint, (and which it was found necessary to amputate the following day,) and inflicted another

severe wound on her left arm, close to the shoulder. Thirdly, he inflicted a severe wound extending from the eye to the back of the ear, on the left side of Kishen Sahoo, and cut off the tip of the thumb and the first joint of the fore-finger of his left hand, as he raised it to ward off the blow, when, on hearing the cries of the above females, he was making his escape from the apartment of Narainee Baee. Fourthly, he entered the apartment of Narainee, where she had been sitting talking with the above-named Kishen Sahoo and Bhugut Naik and Gooloo Baee, and pursuing her round the cot, got her into a corner and there hacked her about in a most frightful manner, but did not, it appears, quite kill her, for it is said, that on his leaving her and going toward the apartment where Chando had taken refuge with Tara, she endeavoured to make her way to the sudder door, which the prisoner had fastened on the inner side after the escape of Gooloo, and he pushed her back and again slashed her about with his sword and put an end to her. Lastly, on Shamee Baee's calling out that he killed her *natnee* Narainee, he attacked her, and inflicting three severe wounds on her head, killed her also. He then placed a chair in the court-yard, sometimes seating himself thereon, and at other times pacing to and fro the enclosure, and in this state he was found with sword and hatchet in hand, and blood streaming from a wound on the right side of the back of his own neck. On the arrival of the ballagusthee and thannah police, the former of whom proceeded to the scene of bloodshed, on hearing the hue and cry, and the latter on receiving information from Bhugut Naik, who, on effecting his escape from Narainee's house, ran forthwith to the thannah. It further appears, that the ballagusthee jemadar and those with him having found the entrance to the house fastened on the inner side, climbed on the *chuppers* of the adjoining houses, and having, after much persuasion, induced the prisoner to throw his sword into the well, got over the wall and secured him, he having, on their first appearance, challenged them, telling them if there was a man of courage among them to come down and confront him. He likewise told them to wait a short while, that he had wounded himself and would also shortly die. And after a little while, the magistrate himself arrived at the spot and sent for the civil surgeon and had the wounds of those who escaped with their lives dressed, and the prisoner secured.

On the following afternoon, the prisoner Mudhoo Pandah made confessions both before the police and the magistrate, stating before the former, that in consequence of Narainee Baee's falsely accusing him of setting fire to her house and,

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not permitting him to have connection with Chando (though he had before given her rupees 10 or 15, and had on the day of the occurrence taken money to her house to procure her consent to his keeping Chando,) he, with his loins girded and with a sword and *katar* in his hand, proceeded on the evening of the occurrence to the house of Narainee to kill her. That on his arrival there he found Tara sitting at the door, but did not then strike her, and on going to the apartment of Narainee, he saw her sitting with three or four men from the Baloo Bazar and a Puthan, who, when he commenced cutting and killing Narainee, absconded. But Kisneea Keot alias Kishen Sahoo who was also there, took the *katar* from his hand and wounded him with it on the back of his neck or collar-bone, and he (the prisoner) then wounded him across the cheek with his sword, and he also took to flight. That another person, whom he did not recognize, then struck him another blow on the back of the neck and absconded, and he then killed Narainee, and after her Shamee Bace, on her coming towards him, but that he did not wound Tara and Jushnee, or know who wounded them. On being further interrogated, he stated, that he went alone to the house of the deceased, and that he purchased the sword three days previously.

Before the magistrate he made a similar, though not quite so full a statement as the above on the 4th August, but on being re-questioned, on the 2nd September, he stated that the *katar* or *kataree* belonged to Kishen Bearah (Sahoo) and that he found the sword in the house of Narainee Bace.

Before this court he pleaded *not guilty*, and entered at the close of the trial into a most confused and feeble defence, stating that Kisneea (Kishen Sahoo,) who bore him enmity, wounded him either with a *kataree* or sword, he did not know which, for he had both in his hands, and that he (the prisoner) took the sword from him and wounded him, but he cited no witnesses in his defence.

The facts above detailed are fully borne out by the evidence of the witnesses, and a full account of the wounds received by the deceased and the other parties is given in the deposition of the officiating civil surgeon : the confessions of the prisoner have also been certified by the attesting witnesses to have been voluntarily made.

The *futwa* of the law officer convicts the prisoner Mudhoo Pandah of all the different counts charged against him, and as there cannot exist the slightest doubt of his having wilfully murdered Narainee Bace and Shamee Bace, and wounded Tara, Jushnee and Kishen Sahoo, in whatever manner the wound on his own neck may have been inflicted, though from

the circumstances of the case, I do not think it could have been inflicted by other than his own hands; he has fully incurred the highest penalty of the law, and I therefore recommend that sentence of death be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and H. T. Raikes.)—*Mr. A. J. M. Mills.*—In the petition forwarded by the sessions judge, the prisoner has reiterated his plea of innocence, casting general imputations on the witnesses and the police, but there is no ground upon which to found the least degree of doubt as to the prisoner having committed the savage acts, with which he is charged. I would convict the prisoner of wilful murder, and as the case is utterly without any extenuating circumstances, I would sentence him to suffer death.

Mr. H. T. Raikes.—There can be no doubt of the prisoner's guilt. I convict him of wilful murder and concur in the capital sentence proposed by Mr. Mills.

PRESENT :
J. DUNBAR, Esq., Judge.

TEELUCK, MUSST. SONICHUREE AND GOVERNMENT
versus
GOMANEE RAM.

CRIME CHARGED.—Wounding the prosecutors Teeluck and Musst. Sonichuree, with intent to kill.

Committing Officer—*Mr. W. Ainslie*, magistrate of Patna.
Tried before *Mr. B. J. Colvin*, officiating commissioner of Patna, with powers of a sessions judge, on the 25th July 1853.

Remarks by the officiating commissioner.—For the prosecution it was said by Teeluck and Sonichuree, who are husband and wife, that on the night of Monday the 27th ultimo, they were asleep on their cot, when they were awoken by sword wounds being inflicted on them by the prisoner; the wounds were sword-cuts on both wrists of the man and also on his right arm, while the woman was wounded severely on the forehead and right wrist. Teeluck got up, recognized the prisoner and called out, when witnesses Nos. 1, 2 and 3, his neighbours, came to see what was the matter, and saw prisoner with a naked sword in his hand, with which in their presence he dealt Teeluck the blow on his arm: they being unarmed were afraid to seize him, and he made his escape. He is a sepoy of the 44th regiment native infantry, stationed at Dina-pore. Prosecutor's family and his lived in the same homestead near that station, and the prosecutor's mother wished to oust

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RAM.
The prisoner,
a sepoy, con-
victed of
wounding with
intent to kill a
man and wife
who lived in
the same
homestead
with him and
from which
they desired to
oust him, was
sentenced to
fourteen years'
imprisonment
in banishment.
Appeal re-
jected.

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RAM.

him and his mother, which had led to a dispute,* and is supposed to have induced the prisoner to the commission of the act.

Witnesses Nos. 4, 5 and 6 saw the prisoner going to his village on the night of the occurrence. The evidence of No. 5 is somewhat equivocal, for he stated that at first he did not acknowledge knowing any thing of the matter, but this was probably to avoid being called on to give evidence. He distinctly swears before me, as he did before the magistrate, that he saw the prisoner going to his village on the night in question.

The prisoner denies his *guilt*. He has called a sepoy and havildar of his regiment to prove that he was in the lines all that night. The sepoy says the prisoner was with him till 11 p. m. I do not credit this man's evidence. All the witnesses state, as also do the prosecutor and prosecutrix, that the attack occurred at 1½ *puhur* of the night, and there is a thannah report of that very night, announcing that two *ghurrees* of the night remained when information arrived from the village gomashtha of Gomanee Singh having wounded the parties. The havildar deposes that the prisoner was present when he counted the men at 9 p. m., and that he awoke him at 3 A. M. next morning for his turn of duty. This is highly improbable, for the adjutant told him off for duty at next morning's parade. But be this as it may, the prisoner might have gone home intermediately, as it was only from one to two *coss* off.

The evidence for the prosecution is clear, consistent and positive, and the prosecutor and witnesses were all familiar with the prisoner; the wounds were fortunately not such as to endanger life, for the blows were partially intercepted by the low door of prosecutor's house, at the mouth of which he and his wife were asleep. I think it clear, however, that the prisoner's intent was to kill them.

Convicting him, in concurrence with the law officer, I have sentenced him under Regulation XII. of 1829 to fourteen (14) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I concur in the conviction. The direct evidence is strong and consistent. As the attack took place during the night, however a doubt might have arisen as to the possibility of the witnesses so certainly recognizing the prisoner, but this is done away with by the circumstantial evidence, which clearly proves that the prisoner did go to the prosecutor's village that night. The sentence is confirmed.

* This dispute, as shown by an extract from the Rozenamcha-buhhee, was reported at the thannah on the 12th June by Gomanee's mother complaining against Teeluck and his mother and sister, and by a counter-charge on the part of Teeluck.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MANOOLLAH NOSYA
versus

EEDOO NOSYA (NoS. 1,) RUNNYE NOSYA (No. 2,) DOLO (No. 3,) AND SUMAROO (No. 4)

CRIME CHARGED.—1st count, with committing dacoity attended with severe wounding in the house of prosecutor Manoollah, and plundering money and property value rupees 64, and 2nd count, with being accomplices to the above crime.

CRIME ESTABLISHED.—Dacoity attended with severe wounding.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 15th August 1853.

Remarks by the officiating sessions judge.—This was a dacoity occurring in the jurisdiction of thannah Bodah on the 14th of May 1853 (2nd Jeyt 1260 B. S.) The *mohurir* proceeded to the spot, some 16 or 18 coss off, on the 16th, and the darogah, in consequence of the magistrate's order, on the 21st, and the prisoners were arrested by the former on the 19th and 20th, together with three others. On the 25th the darogah reported that the property taken was chiefly in cash, and that as nothing was found which the prosecutor could recognize (rupees 100 being concealed near the house of one of the suspected men, which he claimed as his own,) and the arrested men were all of good character, he had placed them in security pending orders. Meanwhile the wounded man had arrived on the 27th at the sudder station, and upon his deposition, the magistrate, on the 31st of May, ordered the witnesses, prisoners, &c. to be sent in. The woman was too severely wounded to be sent at first. On the 10th of July, the darogah forwarded all the parties from the place, assigning that he had been ill, as a reason for the delay, and as he has since committed suicide, we are compelled to be satisfied with the excuse.

Sadoollah (witness No. 1) has the mark of a wound on the head, and the woman Gendah has the fresh scar of a very severe wound, extending from the centre of the head to the left temple.

The prosecutor Manoollah states, that they had all retired to rest and were sleeping, when he was aroused by his mother Gendah's screams, and found the dacoits beating her. He recognized all the prisoners who were not disguised, but he abstained from saying who they were, as being neighbours they would have run away previous to the arrival of the

RUNGPORE.

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Case of
EEDOO
NOSYA and
others.

Four pri-
soners convic-
ted by the
sessions judge
of dacoity
with severe
wounding were
acquitted in
appeal, the
evidence to
their recogni-
tion from the
very first not
being satisfac-
tory.

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and others.

police. They had all *lattees*; No. 2 and Dolo (No. 3) had fire and a bunch of hemp-stalks in their hands. The prisoners Nos. 1 and 2 reside quite close to his house and the others half a mile off.

Witness No. 1, Sadoollah, the brother-in-law of the prosecutor, residing in the same house, was awakened by the woman Gendah's screams, and clearly recognized all the prisoners. Before the mohurir he only named three, but as the mohurir states *four men*, it is probable he omitted to write the name of the other, particularly as on his arrival at the sunder station, he names all before the magistrate.

Witness No. 2, Gendah Bewah, swears to all the prisoners, and states Edoo (No. 1) wounded her. Her statements are all consistent. The apparent differences may be accounted for in a woman not accustomed to give her evidence before courts, and the probability of her not knowing what she said, and did not say on the night of the occurrence, wounded so severely as she was.

Witness No. 3, Palla Nosya, states that he heard Gendah screaming and recognized all the prisoners, and that he then ran away. Before the magistrate he recognized only Nos. 2 and 3, and before the darogah he named the men who were suspected and released by the darogah, but none of the prisoners at the bar.

Witness No. 4, Gourye Nosya merely a *sooruthal* witness.

Witnesses Nos. 5 and 6, *sooruthal* witnesses, know that the woman did not name any one on the night of the occurrence, and know that the prisoners were not present when the neighbours assembled after the dacoity.

Witness No. 7, Nusseerooddeen, knows nothing, except that the prisoners were not present with the other neighbours after the dacoity.

In their defence, the prisoners, who all plead *not guilty* and have done so throughout, urge nothing of weight.

Prisoner No. 1, Edoo, states before the court, that there is a quarrel between him and the prosecutor, but he cannot prove it, and that he possesses a good character; that he is a *faqueer* and is in the habit of begging, and was so employed on the night of the dacoity. Before the magistrate he says, there is no quarrel between him and the prosecutor, and before the darogah that he was before arrested on a charge of burglary. He produces two witnesses.

Witness No. 8, Sonah, who knows that he was once arrested on suspicion of theft, and that he is not a *faqueer*.

No. 9, Rusun Faqueer, who knows that he was once arrested on suspicion of theft, and that he is a *faqueer*.

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and others.

Prisoner No. 2, Runye, states before the court, that there is a quarrel between the prosecutor and his brother Edoo and himself, but he cannot prove it, and that he is respectable. Before the magistrate he says there is no quarrel. His witnesses are :—

No. 13, Lumfdy, who knows that the two brothers live together and that Edoo's house was searched. Believes them to be respectable.

No. 14, Saneea, knows that he is respectable, but knows that the house was searched.

Prisoner No. 3, Dolo, states that there is a quarrel, and that he was at home on the night of the dacoity. Before the magistrate he denied any quarrel existing. He produces six witnesses.

Witness No. 16, Kandoo, saw him on the day of the dacoity, not the night, at work in his field.

No. 17, Kimtoo Dass, lives near the prisoner and believes him to be respectable. Never heard that he was concerned in any case before.

No. 18, Hurrisunker, does not know where he was on the night of the dacoity. Believes him to be respectable.

Nos. 19, 20 and 21 believe him to be respectable.

Prisoner No. 4, Soonaroo, states that his brother was in the prosecutor's service and left it, and therefore he has named him. Before the magistrate he states that there is no quarrel.

Witnesses Nos. 22, 23 and 24 declare him respectable.

No. 25 declares that the prisoner is possessed of double the quantity of cattle and property he himself allows, and also that he was confined in the Dinagepore jail for a year for cattle-stealing.

Considering the evidence of the prosecutor and the witnesses Nos. 1 and 2 consistent and good, and that it is shown, although residing close to the spot, the prisoners Nos. 1 and 2 did not assemble with the other neighbours and advance nothing in their favor, while their characters are at best very questionable. I convict them all of the crime charged, and as the woman positively swears to Edoo (No. 1) having inflicted the very severe wound she suffered from, enhanced his sentence.

I tried the case under Act XXIV. of 1843.

Sentence passed by the lower court.—No. 1 to be imprisoned for twelve (12) years and Nos. 2, 3 and 4 for ten (10) years each, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I do not think the evidence is such as that conviction can be grounded on it with safety. It is in fact of a very doubtful character. First, it is to be noted, that the prisoners

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were all near neighbours of the prosecutor. Had they been recognized by the prosecutor and the witnesses, as sworn to on the trial, it is scarcely possible that one or other of the witnesses would not have mentioned their names to their inquiring and sympathising friends immediately after the occurrence. There had then been no time for the prosecutor to enjoin silence on them, yet none of the other neighbours say that they heard the prisoners named that night; such being the case, and there being no circumstantial evidence whatever to support the charge, I must acquit the prisoners. It is accordingly ordered that they be immediately released.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

PURKIIIT MYTEE.

MIDNAPORE.

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October 26.Case of
PURKHIT
MYTEE.

The prisoner, a hardened offender, was convicted of administering drugs of poisonous character, (the seeds of the *dhuttoora*,) with intent to rob, and was sentenced to transportation for life.

CRIME CHARGED.—Administering drugs of poisonous character (the seeds of the *dhuttoora*) to Chintamonee Mytee, Gopee Mytee and Musst. Lullita Bewa (witnesses to the fact,) with the view of robbing them when dead, or in a state of insensibility, from the effects of the said drugs.

Committing Officer—Captain C. H. Keighly, assistant general superintendent and joint magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 23rd September 1853.

Remarks by the sessions judge.—It is in evidence that the witnesses, No. 1, Musst. Bewa, No. 2, Chintamonee Mytee, and No. 3, Gopee Mytee were returning to their houses in Cuttack from Calcutta: in the neighbourhood of Pauchkoora they fell in with the prisoner, who accosted them and proposed, as he was of their caste, to accompany them and share the expenses of the road. On the 28th of April they put up at the shop of the witness No. 7, at Dantoon; some rice was purchased, and the prisoner volunteered his services to prepare it for cooking. He took it to the tank close by, and after washing it and putting it into a pot, brought it to the witness No. 1, who put it on the fire and cooked it; when ready, she distributed it to the witnesses Nos. 2 and 3 and the prisoner; the two former partook of it; the witness No. 2, after eating a portion, found some seeds sticking to his teeth, and on taking them out and examining them by the light, it was agreed by all three witnesses that they were seeds of the *dhuttoora* plant. The

prisoner however observed, that it was nothing but the seed of the *dhunia*, and encouraged them to finish their meal, though he declined eating any himself, on the plea that rice whilst warm disagreed with his stomach. The witnesses Nos. 2 and 3 became insensible immediately after ; the cries and lamentations of the witness No. 1, sister of the witness No. 2, who suspecting the rice to be poisoned refrained from eating any, brought the chowkeedar and the shop-keeper to the spot. She told them what had occurred and pointed out to them the witnesses Nos. 2 and 3 lying on the ground totally insensible. Information was given to the darogah and the prisoner was arrested, and his intended victims taken to the thannah, where they remained for two days and a half before they recovered the effects of the poison, which had been administered to them. On the prisoner's person were found, amongst other things, a scrip or purse containing several pockets, and in one of these were seventeen seeds of the *dhuttoora* plant ; and in the remains of the food, which the witnesses had eaten, the darogah likewise discovered some seeds* of the same plant. The prisoner confessed before the darogah, and stated, first, that the seeds of the *dhuttoora*, which were tied up in a corner of his cloth, had accidentally fallen into the pot in which the rice was cooked, and subsequently added, on being questioned, that his intention was, when the witnesses became insensible, to take whatever he could find on their persons and make his escape. Before the magistrate and in this court he pleads *not guilty*. The confession, which there is no reason to suppose was extorted, is corroborated by the evidence. There can be no doubt, that the seeds found in the rice, and on the person of the prisoner, are those of the *dhuttoora* plant, and that the prisoner mixed a portion of them with the food, with a view of robbing the witnesses when dead or insensible.

The assessors declare the prisoner *guilty* of the charge on which he is arraigned, and I concur in their finding : under the provisions of Regulation LIII. of 1803, it is within the competence of this court to pass sentence, but there are circumstances attending this trial, which render it necessary that it should be referred to a higher tribunal, as the punishment, which this court can award, is not adequate in my opinion to the offence. The prisoner has been in jail

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* The seeds found in the rice were forwarded to Calcutta for analization, but their properties had undergone such a change by boiling, that Dr. Mouat was unable to state positively to what class they belonged. The *dhuttoora* plant is, however, very common all over India, and the natives are quite familiar with its appearance and properties.

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MYTEE.

no less than four different times.* Once he underwent a sentence of one year for the theft, and in the other instances he was detained one and three years, respectively, in default of security. In three instances he was strongly suspected of having administered poisonous or intoxicating drugs to travellers, but the evidence was not strong enough to warrant conviction. At the very time he committed the crime of which he is now accused, a warrant of arrest was in execution against him, on suspicion of having administered poison to some parties in the Cuttack district. It appears he had been arrested, but effected his escape from the burkundauz, the witness No. 14, and it was, whilst the police were in search of them, that he associated himself with the parties in this case, who so nearly became his victims.† He is undoubtedly a desperate and a dangerous character, and as there are good grounds for supposing that the present is not the first instance in which he has been concerned in administering poisonous or intoxicating drugs, I would recommend that he be imprisoned for life in transportation.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikos.)—In this case, referred by the sessions judge, there is the strongest presumptive proof that the prisoner mixed seeds of the *dhuttoora* plant in the food of the witnesses Nos. 1, 2 and 3, with the intent of robbing them when in a state of insensibility; and the witnesses Nos. 2 and 3 having partaken of the food, so adulterated, suffered in consequence.

With reference to the concluding paragraph of the sessions judge's letter, as the present case, seems to confirm the presumption that the prisoner has systematically pursued this course of life for some time past, I, in conformity with the sessions judge's recommendation, sentence him to imprisonment for life in transportation.

* Theft 1837, one year.

April 1839, one year in default of security.

May 1844—Accused of administering intoxicating drugs not proved. One year's imprisonment in default of security.

February 1850—Arrested on charge of poisoning travellers not proved. In default of security, three years' imprisonment.

February 1853—Released; was again arrested, on a charge of administering drugs to travellers, but made his escape from custody of burkundauz, 23rd March 1853.

† A parallel case to this occurred in this district in September 1843, *vide* trial No. 2 for that month and year, reported to the Sudder Court of Nizamut Adawlut, No. 176, 13th September 1843.

Rampersaud Dass and Dhurmjeet Lall *versus* Ramlukhee. Sentence, imprisonment for life in transportation.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND MUDDUN MIRDHA

*versus*NAZIR KHAN (No. 9) AND MERU ALIAS MEHER CAZEE
(No. 10.)

CRIME CHARGED.—1st count, burglary in the house of Muddun Mirdha, prosecutor, and theft of property to the value of Company's rupees 118, and 2nd count, receiving and possessing portions of the property, knowing them to have been acquired by the above burglary and theft.

CRIME ESTABLISHED.—Prisoner No. 9, being an accomplice in the burglary committed in the prosecutor's house; prisoner No. 10, receiving and having in possession property, knowing the same to have been stolen.

Committing Officer—Mr. A. J. Jackson, officiating joint magistrate of Furreedpore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Dacca, on the 10th August 1853.

Remarks by the officiating sessions judge.—From the evidence in the case, it appears that a burglary was committed in the house of prosecutor on the 14th Aghun 1258, corresponding with 29th November 1851, and property to the amount of rupees 118 and upwards stolen. No clue to the burglars was then found. On the 9th or 10th Jeisty, corresponding with the 21st and 22nd May 1853, however, the prisoners were seen by the witness Aroo Sheikh, attempting to dispose of the articles numbered 1, 2 and 3, being two *battees* and a *garoo*, in Joynuggur haut. Aroo Sheikh, who was before a servant of the prosecutor, recognized the things as belonging to his former master, and gave him information of what he had seen. Prosecutor, who was in the haut at the time, immediately recognized the things and made over the prisoners into the custody of the chowkeedar of his village. The witnesses Nos. 7 and 8 recognized the property as that of the prosecutor.

That a burglary was committed in his house at the time stated is proved by witnesses. The prisoner No. 9 confessed both before the police and magistrate, that he had been an accomplice in it, and prisoner No. 10 can give no satisfactory account of where he got the property found on him. They plead an *alibi*, but it is entirely refuted by the witnesses who are cited by them in support of it. The *futwa* convicts the prisoners under a sentence of *acoobut*, and concurring in the conviction, I have sentenced Nazir Khan to five (5) years'

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Case of
NAZIR KHAN
and another.

Two prisoners, convicted of burglary and theft, sentenced by the sessions judge to different terms of imprisonment. Appeal rejected.

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NAZR KHAN
and another.

imprisonment with labor and irons in banishment, and Meru *alias* Meher Cazee, in consideration of his youth, to one (1) year's imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The facts alluded to in the remarks of the sessions judge are sufficient to convict the prisoners of the crimes charged against them.

I see no reason for the Court's interference, and therefore confirm the sentence passed upon them.

PRESENT:

H. T. RAIKES, Esq., Officiating Judge.

MUSST. CHAINGREEME
versus

**NAHMOONG ALIAS MAONGTSAAIA (No. 1,) SHOOAI-
TOO (No. 2,) AND NAPPOO (No. 3.)**

ARRACAN.

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NAHMOONG
alias **MAONG-**
TSAAIA and
others.

Three pri-
soners con-
victed of da-
coity attended
with murder,
sentenced to
transportation
for life.

CRIME CHARGED.—Dacoity in the house of the prosecutrix, attended with murder of her husband, Doongshai.

Committing Officer—Lieut. G. Faithful, principal assistant of Akyab.

Tried before Captain H. Hopkinson, commissioner of Arracan, on the 22nd September 1853.

Remarks by the commissioner.—The case was committed by Lieutenant G. Faithful, principal assistant to the commissioner of Arracan, on the 23rd August 1853.

The prosecutrix, an old woman, of about 50, resided with her husband, the deceased Doongshai, her daughter, son and son-in-law, witnesses Nos. 1, 2 and 3, in a solitary house in the deserted village of Nuneetoung in Kyoukhtan circle, and in the criminal jurisdiction of the Koladyne thannah; she knew the prisoner Nahmoong *alias* Maongtsaaia well, he having been once her only neighbour for about a year, and it is only a year since he left the vicinity; the remaining two prisoners, Nos. 2 and 3, she saw for the first time at the commission of the dacoity, but most positively identifies them; all three prisoners live at the village of Petsee, about four miles from Nuneetoung. The prosecutrix was pounding out paddy by the light of the moon within two or three days of the full, between the hours of 9 and 12 P. M., in front of her house, and her husband, the deceased Doongshai, was weaving bamboos for a fence near her, when the prisoners Nos. 1, 2, and 3 made their appearance within the entrance of the enclosure surrounding the house, accompanied, it is declared, by two others (making five dacoits in all,) who, however, took no active part in the proceedings and do not appear even to have entered

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the premises. No. 1, prisoner Nahmoong, who acted as leader, turned from the door-way of the enclosure and went round to a paddy godown attached to the house ; Nos. 2 and 3, Shooaitoo and Nappoo, armed with clubs, went inside and bound and beat the deceased Doongshai, and No. 3, Nappoo, struck the prosecutrix on her going to her husband's assistance ; she left her husband lying on the ground insensible from the effects of the blows given him by the dacoits with their clubs, and fled to Toung-pink-rwa village, where she procured assistance and returned to her house to find her husband breathing his last, and her house plundered of about rupees 150 worth of property, of which rupees 60 was in cash. The dacoits had decamped.

The prosecutrix told Ung-ge Rwalgoung (witness No. 8) the same night that she had identified *the prisoner* No. 1, Maongtsaia (literally the Chedula doctor, because he is a Chedula man.)

The prosecutrix insisted in the most emphatic manner, that she had not made, and could make no mistake as to the identity of the prisoner No. 1, Maongtsaia, with whose person she was perfectly familiar, and she was nearly as positive as to the identity of the other two prisoners.

The prosecutrix reached the Koladyne thannah to give her information in the course of the night of the 22nd March ; the darogah started off immediately for the scene of outrage, and arrived at the prosecutrix's house and made the *sooruthal* the next day, the 23rd March ; on this day, also, about 3 P. M. in the afternoon, he apprehended the three prisoners.

Witness No. 1, Meekolama, the daughter of the prosecutrix, was in the house of the prosecutrix, hanging over the fire with her child, when the dacoits came ; saw them from the verandah ; saw prisoner Shooaitoo (No. 2) beat her father, the deceased Doongshai ; saw her mother also beaten ; would have gone to the assistance of her father, but was prevented by Shooaitoo (No. 2,) who struck the witness and pushed her by the neck into the house, and bade her deliver up her valuables ; she put the robbers off by saying, that all the property was concealed in the rice godown ; the prisoners Nappoo (No. 3) and Shooaitoo (No. 2) made her go with them there, Nappoo (No. 3) taking a light from the house. When they reached the rice godown, the witness saw near it a figure, which she took at first for that of her husband, the witness (No. 3) Twongyo ; and having her child in her arms, she drew nigh and held it out towards him to take, when the features, not of her husband, but that of Maongtsaia (prisoner No. 1,) were revealed to her. She had known him well before, when he had lived near her father's house.

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Shooaitoo and Nappoo (prisoners Nos. 2 and 3) then crying out that she was trifling, and that there was nothing in the rice godown, forced her back to the house, and there made her give up to them, from her sleeping apartment, property, principally in cash and silver ornaments, to the value of about rupees 150. The witness insists strongly on her identification of all three prisoners. Nappoo and Shooaitoo she had never seen before, but on this occasion of the dacoity; they were then, however, sufficiently long with her for her to be sure of their identity, when she met them again. She told witness No. 8, Ung-ge, that the Maongtsaia was of the party of dacoits when he first came to the house on hearing of the dacoity.

Hunpoong (witness No. 2,) son of the deceased, depose that he was tying up the cows with his brother-in-law Twongyo (witness No. 3,) when he heard the noise the dacoits made in beating his father. The sound of the voices of himself and Twongyo apparently attracted the attention of the dacoits, one of them at least came to the cow-house and attacked the witness and Twongyo, beating them both with a stick until they ran away: this was the dacoit Nappoo (No. 3.) The witness recognizes him perfectly in court. The witness had his head broken by Nappoo, and still bears the scar very plainly. Witness fled by the outside of the fence of the house, and reaching the bank of a nullah on the north, there met his mother and brother-in-law, and crossing the nullah in a boat, they all three proceeded to Tsagouk. Witness did not see any of the dacoits but Nappoo, and does not know how many there were. The age of this witness is about 16 years.

Twongyo (witness No. 3) was with his brother-in-law, the witness Hunpoong, stalling the cows after their evening meal, and about the time children are sent to bed, when their attention was arrested by the mumuring voices within the deceased Doongshai's enclosure, followed by a sound as of beating. The witness knows nothing of the actual perpetration of the dacoity, of the beating of Doongshai, and the plundering of the house, and he is ignorant as to how many dacoits there were, or who they were, all save one, the prisoner No. 3, Nappoo, who came and attacked witness and his brother Hunpoong in the cow-house, and severely beat them both and put them to flight. Witness hid himself in a bush, and afterwards joined his mother-in-law and Hunpoong, as they were about setting into a boat to cross a nullah. Of the prisoner No. 3, Nappoo's identity with the dacoit who beat him and his brother-in-law, the witness has a certain conviction. I took great pains with his deposition and subjected him to a severe cross-examination, but his testimony was not

to be shaken. I confronted him with the prisoner Nappoo, and bade him look well in the face and say whether he was the man. I impressed it upon him in the most serious and earnest manner, that his might be the evidence that would turn the scale against the accused and consign them perhaps to perpetual banishment and imprisonment, and still to pause before he committed himself to his statement, unless he were morally certain of its truth. The witness, however, did not waver for a moment; he delivered his evidence in the best possible style. "Come what would, he declared," Nappoo was the man. Nappoo has a peculiar countenance and wears long, thick, black moustachios, unusual among the Arracanese, and his face is marked with the small-pox." The witness was positive he could not be mistaken as to his moustachios, and added—"I noticed that the dacoit who beat me was marked with the small-pox; now look at the prisoner Nappoo's pox-marks, could I mistake those again?" I am quite assured of the good faith of this witness.

Witnesses Nos. 4 and 5, Thaya and Shoovilhai, depose to the apprehension of the prisoners, and both testify to the good character all three have heretofore borne.

The witnesses Nos. 6 and 7 to the inquest on the body depose, that on Thursday morning, the 24th March, they were present when the police examined the body: there were marks of violence, 1st, on the side of the right ear below the temple, a blow as with a stick had cut open a space eight fingers in length; 2nd, the nape of the neck was all swollen, and as if broken; 3rd, there was a contused wound on the back.

The evidence generally established a sufficient connexion between the death of the deceased Doongshai and the injuries inflicted on him by the dacoits.

The evidence of witnesses Nos. 8, 9, 10 and 24 is circumstantial and not very material, but Ung-ge (No. 8) and Kheang (No. 9) depose to hearing about the dacoity immediately after it occurred, in the early part of the night of the 21st March. Ung-ge meeting witnesses Nos. 2 and 3, with their heads broken, was informed by them of the dacoity, and hurried off to the spot, meeting the prosecutrix on the way there with the witness Kheang. When they got to the house of the prosecutrix, Doongshai was still breathing, but shortly after died. Prosecutrix and Mekolama both told the witnesses that they had recognized the prisoner Maongtsaia (No. 1.)

Four sticks or clubs were picked up where Doongshai was beaten, from three to four feet long, and weighing from 36 to 48 tolahs each.

The prisoners admitted being all three together, and absent from home on the night the dacoity and murder were committed,

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but they resort to an *alibi*, which is certainly strongly supported by evidence, going to establish, that at the time of the commission of the offence, they were passing the night in a boat a distance away of at least one tide, or six hours' good pulling. There exists, however, a remarkable variation in the account they gave of their movements at the thannah, as compared with what they stated in a written defence presented to the magistrate and in their defence at the sessions trial. In the thannah statements—and the accuracy of the thannah record of these statements is proved beyond all cavil—all three declare that they left their village on Saturday the 19th March, but Nappoo disagrees with the other two in saying that they returned on the evening of *Tuesday*, the day *after* the murder, instead of *Wednesday*. Nos. 1 and 2, however, not only declare that they started on the Saturday, but describe particularly what they did and where they slept on that day, on the following Sunday, Monday (night of dacoity,) and Tuesday, sleeping four nights away, two of which, or the nights of Sunday and Monday, they affirm, were passed at the same place, Tetma-kyoung; but on the other hand, before the magistrate and at the sessions, they all agree in having started not on Saturday the 19th, but on Sunday the 20th March, and that they slept not two nights but one night, and that night, Monday night (the night of the dacoity,) at Tetma-kyoung. This account is corroborated by a witness (No. 24,) who proves the hiring of his boat by the prisoners on Sunday the 20th instant, and by three witnesses (Nos. 11, 12 and 16,) who depose to having been in company with the prisoners on the evening and early part of the night of Monday (night of dacoity) the 21st March, at Tetma-kyoung. No. 24, however, though so positive of the date on which he hired out his boat, could not tell me the day of the month on which I was examining him at the sessions; and the other three witnesses are certainly not persons who would ordinarily know the day of the month; one of them appeared to me foolish; and No. 16, Cashe, is a Mroo (one of the hill races of the River Koladyne,) for whom to know even the names of the months in Burmese is a remarkable degree of knowledge.

The prisoners were defended by counsel before me and in the magistrate's court.

The prisoner No. 1, Nahmoongtsaia, added to his *defence*, that there had been an old feud between himself and the deceased Doongshai, arising out of a demand by the latter for pasturage fees, which he, Nahmoongtsaia, had resisted: this had excited an ill-feeling, to which he attributed the charge of the prosecutrix.

Supposing witness No. 24, Nga Keunt Kay, to have made a mistake in the hiring of the boat by a day, and that the hiring really was on the 19th March, as originally asserted by the prisoners, and not the 20th March, the presumption of guilt against them is, in my opinion, overwhelming. If on the other alternative, the boat was hired on the 20th March, I think the distance would have allowed the prisoners to have committed the dacoity on the Monday to have reached Tetma-kyoung in the course of Tuesday and to have left Tetma-kyoung or Cashe's village on Wednesday morning early, so as to reach their own village by noon.

The prisoners might have been at Tetma-kyoung on Sunday, or they might have been there on Tuesday ; it is unnecessary, therefore, for the reception of their guilt, that we should refuse credit to the witnesses, who say they met them at Tetma-kyoung, or question any part of the evidence for the *alibi* beyond the accuracy of the dates given.

But we are then called upon to consider, whether we shall impute the grossest and most flat perjury to the prosecutrix and to the witnesses to the facts for the prosecution—a supposition quite at variance with their demeanor and the consistency of their testimony, and not explained on the grounds of interest, or any sufficient bias against the prisoners (Nahmoongtsaia's statement rather tells against him,) or whether it is not more reasonable to believe that the witnesses for the *alibi* have erred in naming dates. I consider that the weight of proof forces me to adopt this last supposition.

I convict the prisoners No. 1, Nahmoong *alias* Maongtsaia, No. 2, Shooaitoo, and No. 3, Nappoo, of dacoity attended with murder, and would recommend each to be sentenced to be imprisoned and transported for life.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—There is sufficient proof to convict the three prisoners, if the evidence of the prosecutrix and the three eyewitnesses can be relied upon. Of this evidence the commissioner has given a very full and accurate account in his letter of reference, and he regards it as entitled to every confidence. I have also gone over it, and can speak to its consistency throughout, its freedom from exaggeration, and the absence of all apparent anxiety on the part of the parties who gave it to implicate more deeply the prisoner No. 1, whom they all knew previously, and whom they evidently suspect to have been the leader and instigator of the crime.

The commissioner, moreover, describes the demeanor of the witnesses as natural and unembarrassed, and tending further to convince him of the truth and artlessness of their testimony. Due weight must be given to such an opinion, coming from

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one who himself examined the witnesses ; and as the commissioner has moreover shown good and sufficient grounds, in my judgment, for doubting the accuracy, if not the honesty of those who appeared to support the prisoners' *alibi*, I concur with him in convicting the prisoners of dacoity attended with murder, and sentence them, as proposed, to imprisonment for life in transportation.

PRESENT.

SIR R. BARLOW, Bart., }
 AND } *Judges.*
 J. DUNBAR, Esq., }

GOVERNMENT AND MUSST. BIRUNGEE
versus.

MUSST. GUNGAJULEE.

SHAHABAD.

1853.October 31.

Case of
MUSST. GUN-
GAJULEE.

The prisoner was convicted of the wilful murder of the man who kept her as a mistress, and was sentenced to capital punishment.

CRIME CHARGED.—Wilful murder of Dindial Dass, the husband of the prosecutrix, Musst. Birungee.

Committing Officer—Mr. J. Worsley, deputy magistrate of Sewan zillah Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 20th September 1853.

Remarks by the sessions judge.—The prisoner is charged with the wilful murder of the deceased, and the evidence in the case substantiates the charge. The prosecutrix is the wife of the deceased and the prisoner is his kept-mistress.

The prosecutrix and another woman, witness No. 8, were sleeping together on the night of the 28th August in a room distinct from that in which the deceased was lying with his son, a boy of nine years old, when, towards the middle of the night, they were awoke by hearing the deceased call out, “Open the *tattee*, Gungajulee has wounded me and is making off.” They both jumped up, and opening the door, found that the deceased had fallen to the ground, gasping for life ; he had been wounded in the throat, and he died where he fell.

Witness No. 1, a young, but very intelligent boy, deposes that he was sleeping with his father on the night of the murder, and waking suddenly, perceived him struggling with the prisoner, who had a knife in her hand ; that she struck him both on the hand and neck and then ran away, and that his father then got up, and they both went to call his mother, the prosecutrix, as described by the prosecutrix and witness No. 8. Two other witnesses, Nos. 9 and 10, who were in the adjoining house, deposed to have been awoke by the noise and having gone to the spot and seen the dying man, and witness No. 11 states that the prisoner, who lives with her, left her home on the

evening of the murder. Some pieces of broken bangle were found on the bed, which are proved to be her property, and four rupees in her waist, which are supposed to have belonged to the deceased; a *shudder* also, stained with blood, which is proved to be hers. The cause of this savage deed appears from the evidence to have arisen from the prosecutrix having endeavoured to break off the connexion between the prisoner and her husband, in which the deceased appears to have been a consulting party, having told the prisoner to discontinue her visits. A quarrel occurred on this subject four days before the murder, when, according to the statement of the prosecutrix, the prisoner held out a threat that she would kill the deceased.

The evidence of the native assistant surgeon proves the presence of two severe wounds, one on the right hand, which divided the arteries, and another in the throat, either of which he considers sufficient to cause death.

The *sooruthal* shows that the bed and room were stained with blood.

The prisoner makes no defence, save in regard to the rupees 4 which she claims as her own. To attest this fact, she gave two witnesses, but they denied all knowledge of the prisoner's statements.

¹ The *futwa* finds the prisoner guilty of murder, but declares *kissas* barred, owing to the minority of the eye-witness.

A second *futwa* declares that but for this defect, the prisoner would be liable to *kissas*.

I hold the prisoner's guilt to be clearly established.

The murder was evidently pre-meditated, the prisoner having come from her own house to that of the deceased at dead of night and in cold blood. I can see no grounds of extenuation and accordingly recommend that she be sentenced to death.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. Dunbar.)

Sir R. Barlow.—The chief witness against the prisoner is a boy, the son of the deceased. He saw her in the act and heard his father cry out, as did several other witnesses, that the prisoner had attacked and was killing him. The sessions judge has fully reported the cause of the murder and the circumstances attending it. The evidence for the prosecution is clear and convincing, and I can find nothing on the record which would warrant mitigated sentence. I concur in that proposed by the sessions judge.

Mr. J. Dunbar.—The entire evidence taken together is very strong. The boy saw the struggle. Two near neighbours, hearing the deceased cry out that he had been wounded

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by the prisoner, came out of their houses and saw the prisoner going away ; and she herself admits, that the pieces of broken bangle found on the spot belong to her. The only defence she has attempted is to say, that she was attracted by the outcry, and going to see what was the matter, fell over the bedstead and so broke her bangle. Plausible as this statement may appear, it is of no avail against the strong evidence against her. I concur in the conviction and in the sentence proposed.

PRESENT.

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

RAMCHUNDER SURMA CHUCKERBUTTY (No. 3.)
GOVIND PERSHAD SURMA MOYTRO (No. 4,) AND
BUNDEERAM SHAHA (No. 5.)

Mymen-
singh.
—

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others.Prisoners
convicted as
accomplices in
a riotous as-
sembling and
attack on a
haut, with
wounding,
sentenced by
the sessions
judge to two
years' impri-
sonment. Ap-
peal rejected.

CRIME CHARGED.—1st count, being accomplices in riotously and illegally assembling and attacking Haut Jugutunge, and severely wounding Sheikh Soomeer Meer, and 2nd count, ordering the above illegal assemblage and wounding.

CRIME ESTABLISHED.—Being accomplices in riotously and illegally assembling, attacking Haut Jugutunge, and severely wounding Sheikh Someer Meer, and ordering the above illegal assemblage and wounding.

Committing Officer—Mr. C. E. Lance, assistant magistrate in charge of the sub-division of Jamalpore, exercising the powers of joint-magistrate.

Tried before Mr. W. Trotter, officiating sessions judge of Mymensigh, on the 25th August 1853.

Remarks by the officiating sessions judge.—The particulars of this case were thus described by my predecessor, who tried it on the 15th July 1852 :—

“ From the evidence of the eye-witnesses it appears that disputes existed between Taramonee Chowdraine, proprietor of Haut Jugutunge, and Chunderkanth Surma, proprietor of Haut Sumbhoogunge, which are opposite each other, and only separated by a small nullah ; and that on the day in question, a large body of people crossed over from Sumbhoogunge to attack the other *haut*, and on witnesses Nos. 1 and 2 remonstrating, the leaders ordered them to be beaten. No. 19 threw a *jata*, a kind of spear, at witness No. 1, and caused a severe wound

* *Vide* Nizamut Adawlut Reports for September 1852, page 445.

on the calf of the leg, from five to six inches in length, a small portion of which was still unhealed, and on his falling he was carried off to Sumbhoogunge, and four or five days after the arrival of the darogah found in No. 22's (acquitted) cow-house. He says himself, that he was first taken to No. 19's (Buddeenath Deb's) house, and shortly before he was found, to the cow-house, where probably it was unsafe to keep him any longer. In their defence, all the prisoners set up an *alibi*, the evidence in support of which I concurred with the law officer it had failed to prove, and I have passed a rather severe sentence, as it is necessary to put a stop to such disturbances. If proprietors of land choose, as they are entitled to do, to set up *hauts* on their own lands close to another *haut*, they must permit the frequenters of them to go to whichever they please. The *futwa* of the law officer convicts No. 19 of the crime charged, and Nos. 20, 21, 23, and 24 as accomplices in the same, and I have passed a severe sentence upon No. 20 (Lall Singh,) as he appears to have been one of the chief of the party and apparently employed in seizing the people going to the other *haut*."

These prisoners then absconded, but were subsequently apprehended and committed for trial. They denied the charge and for their defence set up an *alibi*, but witnesses Nos. 1, 2, 3, 4, 5, 7 and 11, who recognized them distinctly, stated that they were in the affray, and headed the rioters and ordered the attack. The prisoners examined some witnesses on their behalf, but they failed to exculpate them, and they were moreover dependants of their master, Chunderkanth Surma. The *futwa* of the law officer convicts the prisoners of the crime charged and declares them liable to punishment by *acoobut*, a verdict in which I concurred.

Sentence passed by the lower court.—To be imprisoned without irons each for the period of two (2) years and to pay a fine of rupees 200, on or before the 25th September 1853, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adwalut.—(Present: Mr. J. Dunbar.)—I concur with the sessions judge in allowing no weight to the evidence for the defence as opposed to that for the prosecution, which has been clear, positive and consistent from the first. The sentence is confirmed.

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Case of
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SUMMARY CASE.

PRESENT:

A. J. M. MILLS, Esq., }
 AND } Officiating Judges.
 H. T. RAIKES, Esq., }

GOVERNMENT

versus

CHUMMON RUJWAR (No. 6) AND DHUTOORIA RUJWAR (No. 7.)

CRIME CHARGED.—1st count, Nos. 6 and 7, theft of property valued at rupees 6, belonging to Leela Goala, witness, attended with violence, and 2nd count, No. 6, with slightly beating Musst. Rumtee, witness, when committing the aforesaid theft.

Committing Officer—Mr. A. G. Wilson, deputy magistrate of Nowadah, zillah Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 31st August 1853.

Remarks by the sessions judge.—Leela Goala (witness No. 1) and his wife Musst. Rumtee (witness No. 2) are the solitary residents of a detached hamlet, belonging to, but at some distance from the village of, Sohjuna, of which Jeetun Rujwar (witness No. 4) is chowkeedar.

Witnesses Nos. 1 and 2 depose that during the night of the 29th June last, seven thieves got inside their house and plundered it of its contents, *viz.* a few brass vessels, a goat, and some grain, and slightly beat them. They only recognized the two prisoners amongst the robbers as the most active in the robbery and beating.

Witnesses Nos. 3, 4, 5 and 6 depose to their running up from Sohjuna on hearing witness No. 1's outcries, and to their having seen three thieves running away from witness No. 1's house, followed by the two prisoners, and a third, Rummun, all three of whom they recognized.

Both prisoners have always denied the charge and attributed it to witnesses Nos. 4 and 5's malevolence. Both called witnesses in support of *alibis*.

The *futwa* of the law officer convicts both prisoners of the theft, and declares them liable to discretionary punishment by *tazeer*.

The prosecution must be mainly viewed with regard to the credibility of the husband and wife's testimony, relative to their recognition of the robbers in the act; for that of the remaining witnesses Nos. 3 to 6, as to their having recognized them whilst running off, is meagre in itself, and at the same time, as will be further noticed, otherwise objectionable. I find the former, both in matter and manner, so much shaken in

BEHAR.

1853.

October 8.
Trial of
CHUMMON
RUJWAR and
another.

Commitment quashed,
a previous con-
viction of pet-
ty theft being
not such a
conviction as
necessitates
committal to
the sessions
under Reg. VI.
of 1824. The
judge should
have cancelled
the commit-
ment and di-
rected the ma-
gistrate to dis-
pose of the case,
as directed by
Circular Order
No. 70, dated
14th Novem-
ber 1851.

1853.

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 Trial of
CHUMMON
RUJWAR and
 another.

examination, that I can rest no conviction on it. The husband was sleeping in the court-yard, the wife in the inner room, out of which the robbers obtained the stolen property. According to the husband, Dhutooria alone beat and pinioned him, whilst the other robbers entered the room; yet it was Dhutooria's (prisoner No. 7) taking the goat out of the room, which awoke the wife, because, as she said, the robbers had gagged her husband, and kept him so until they were leaving, when Chummon (prisoner No. 6) unbound him. Contrary to this, the husband deposed to his having set up the alarm, whilst Dhutooria was beating him, as would alone consistently account for the witness Jeetun (witness No. 4) and his companion's timely arrival from such a distance; and again, when questioned after his wife, whether he had been gagged, acknowledged it for the first time, as well as the impossibility of his having set up any outcry. Both are also said to have been beaten to deter them from calling out, yet their persons never showed any thing but the slightest scratches, and the blow aimed at the wife in the presence of each other is said by the husband to have knocked her down on the eastern side of the court-yard, whilst the wife herself said this happened to her on the northern side. Besides such gross contradictions, their testimony is in itself equivocal, inconsistent and improbable, affording internal evidence of concoction. It is not likely seven robbers would have troubled themselves to plunder such a lone poor dwelling, whilst nothing is more probable than that its inmates would be the ready tools of their chowkeedar Jeetun (witness No. 4,) when countenanced, as he must have been, by higher local influence.

The trial elicited from Jeetun, that his father Balkee, now a convict in jail, undergoing a sentence of seven years' imprisonment for robbery, which he owed to the prisoner Chummon's manœuvres, had been the former chowkeedar of Sojhuna, in which he was succeeded by the prisoner Chummon, and whom in like manner Jeetun has contrived to displace, as recently as the 15th of December last, with the aid of a report from the village putwaree, reporting Chummon's absence. Chummon told this court he had resigned.

Lulloo Rujwar (witness No. 3) and Bhuttoo Rujwar (witness No. 5) are Jeetun's (witness No. 4) relatives, appointed, it is said, to assist him in his rounds, consequent on the prevalence of robbery. Horil Goala (witness No. 6,) the remaining witness, and only villager who accompanied the party, and with whom Chummon alleges a grudge, contradicted all three, saying he was unarmed, whilst the three were armed, which they denied, saying Jeetun alone was armed, as excusing the neglect of four able men to apprehend three robbers, whom they alone

faced out of a party of seven robbers, a number perhaps purposely added in support of the same pretence, as great a fiction as that a chowkeedar and his two unusual aids would have responded to such an alarm unarmed, or, bearing in mind the respective histories of the two parties, that they would thus have met face to face, and both have separated uninjured. The third robber, said to have been recognized by them as Ruunmon, is the prisoner Chunmon's brother. Bhuttoo Rujwar (witness No. 5,) another son of the convict Balkee, was implicated in the same case with his father, was at the time chowkeedar of Ghowsnugger, underwent a six months' imprisonment, and was succeeded by Beharee, the prisoner Dhutooria's brother, who is still chowkeedar of Ghowsnugger. These coincidences are too singular to entitle the testimony of such people to any weight, and I therefore not only find the prosecution utterly untrustworthy, but also that the incongruities of the prosecution throughout are so gross as to warrant the presumption, that it originates in conspiracy by the chowkeedar Jectun (witness No. 4) and his brother the ex-chowkeedar Bhuttoo (witness No. 5) to pay off old scores on the two prisoners, whom I accordingly consider entitled to their unqualified acquittal.

I must add that the deputy magistrate's proceedings made the commitment on the ground of the prisoner Dhutooria's former conviction, which, according to paragraph 4, Circular Order No. 13, 14th November 1851, barred interference of this court. With the close of the trial, however, the particulars of the former conviction were forthcoming, and showed that Dhutooria had been imprisoned two months, September 1850, for the guilty possession of stolen property, valued three annas, which, therefore, made it a petty theft, non-equivalent to a previous conviction, requiring committal to the sessions under Section V. Regulation VI. of 1824. The deputy magistrate's attention has been drawn to the subject.

Resolution by the Nizamut Adawlut, No. 1168, dated 8th October 1853.—(Present : Messrs. A. J. M. Mills and H. T. Raikes Officiating Judges.)—The Court, having perused the papers above recorded, connected with the trial of Chunmon Rujwar and Dhutooria Rujwar, observe that the magistrate has erroneously made the commitment, as pointed out in the last paragraph of the sessions judge's report, and the sessions judge should have cancelled it, in accordance with paragraph 4 of the Circular Order No. 70, of the 14th November 1851, which declares that a commitment may be cancelled in a case in which the magistrate has power to dispose of it. The Court, therefore, quash the proceedings of the sessions court and direct that the case be returned to the magistrate to be disposed of by that officer.

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October 8.
Trial of
CHUNMON
RUJWAR and
another.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND OTHERS
versus
GOPAL GHOSE.

CRIME CHARGED.—1st count, committing a dacoity on the boats of the prosecutors, Jeetun and Bhoopat Shooria, and thereby plundering property to the amount of rupees 32-6-4; and 2nd count, having and keeping in his possession a portion of the property above-mentioned, knowing it to have been procured by the said dacoity.

CRIME ESTABLISHED.—River dacoity and knowingly receiving and keeping in his possession plundered property obtained by the said dacoity.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 20th August 1853.

Remarks by the sessions judge.—The prosecutors were the *manjees* of some timber float boats, who were returning to their homes near Monghyr. They had passed the toll ghaut at Gwaree and reached a small village called Sahibnugger, about five miles higher up the river, where they put to for the night. A little after midnight, two men came to their boats and asked for fire. The boatmen said they had none, and shortly after about 15 men came down, pulled straw from the thatches of the boats, set fire to it, and cleared the boats of all they could find, which they carried off. The prisoner was apprehended by witnesses Nos. 4 and 5, (who were watching their paddy crops at about 100 yards from the place where the boats were fastened,) with a bag containing some rice on his head, and an iron rice bowl and a brass *lotah* in his hands, in the act of running off, and they delivered him and the property over to the police. The prisoner confessed before the police, the magistrate and this court, to the dacoity only, but the second charge has been also clearly proved against him. He made no defence and called no witnesses.

Sentence passed by the lower court.—Seven (7) years' imprisonment, and (2) two years in lieu of corporal punishment, being in aggregate to nine (9) years, with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner in his petition of appeal does not deny his confession, but says that it was made under

NUDEEA.
1853.

November 8.
Case of
GOPAL
GHOSE.

Prisoner,
convicted of
river dacoity
and knowingly
receiving plun-
dered property,
sentenced by
the sessions
judge to nine
years' impris-
onment. Ap-
peal rejected.

740 CASES IN THE NIZAMUT ADAWLUT.

1853.

November 3.
Case of
GOPAL
GHOSE.

an erroneous impression, that it would lead to his discharge. This is certainly improbable enough in itself, but putting aside the confession, deliberately repeated at every stage of the proceedings, the evidence of the two men, who seized the fellow, when making off with his booty, is sufficient to establish the charge.

The sentence is confirmed.

PRESENT:

J. DUNBAR, Esq., Judge

KASHEENATH SEIN AND GOVERNMENT.

versus

ALLADEE SHEIKH (No. 9,) BHANGUR SHEIKH (No. 12,) JADOO CHYEN (No. 13,) BUKSOO SHEIKH (No. 16,) BUKTAR SHEIKH (No. 17,) AJIM SHEIKH (No. 18,) KOORAN SHEIKH (No. 19,) SUSTOO SHEIKH (No. 20,) AND RUHOMUT SHEIKH (No. 21,) APPELLANTS.

MOORSHEMA-
BAD.

1853.

November 3.
Case of
ALLADEE
SHEIKH and
others.

Conviction
and sentence
passed by the
sessions judge
in a case of
dacoity and
plunder upheld
in appeal.

CRIME CHARGED.—1st count, Nos. 9, 12, 13, 16, 17 and 18, dacoity in the house of the prosecutor, from which property to the value of rupees 147-9-9 was plundered, and 2nd count, Nos. 9, 19, 20 and 21, knowingly receiving and possessing a portion of the plundered property.

CRIME ESTABLISHED.—Nos. 9, 12, 13, 16, 17 and 18, dacoity, and Nos. 19, 20 and 21, knowingly receiving and possessing plundered property.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 16th August 1853.

Remarks by the sessions judge.—On the night of the 14th May 1853, a gang of about 23 or 24 dacoits attacked the house of the prosecutor, and plundered therefrom property to the value of Company's Rupees 147-9-9. The next day it was reported to the darogah of thannah Khamrah, who repaired accordingly to the spot and investigated the case. The prosecutor and the witnesses deposed before him, that a dacoity had taken place and property been plundered, and according to their recognition, some persons were arrested and sent in to the magistrate by that darogah, but released by the latter.

On the night of the 15th May, of the darogah of thannah Dewanseraie, while in his round towards Kuddumtulla village, saw some persons sharing property, consisting of brass *ghurras*, &c., in the house of Khoodee and Baboo Sheikh, and

caused the prisoners Alladee, Kooran, Ruhomut and Sustoo to be arrested immediately with the property by Sheebdyal, &c., burkundauzes. He then wrote to the darogah of thannah Khamrah, who sent the prosecutor to identify the property, which he recognized as belonging to him. The prisoner Alladee implicated Khoodee and others. Khoodee was apprehended, and in his confession, he implicated other prisoners as concerned in the dacoity, and they were accordingly arrested. Baboo Sheikh was subsequently apprehended, and he made a confession in the same manner as Khoodee did. These two men, namely Khoodee and Baboo Sheikh, were released by the magistrate, and allowed to turn queen's evidence against the other prisoners, whom he committed to the sessions.

The prisoners Alladee, Kooran, Ruhomut and Sustoo were arrested in the night by the police with the plundered property, which has been identified by the witnesses as belonging to the prosecutor, and though they deny the charge, admitting that they were present at the time and on the spot where the property was being divided. From the evidence of Khoodee and Baboo, it appeared that Alladee was the *sirdar* and an accomplice in the dacoity, and that his son Buktar was one of the gang. The prisoner Alladee had been arrested on a previous occasion in a case of dacoity but released. The prisoner Buksoo, son of the prisoner Kooran, and the prisoner Ajeem, son of the prisoner Ruhomut, and the prisoner Sustoo, nephew of the prisoner Alladee, and the prisoner Buktar, cousin of the prisoner Sustoo, were also among the dacoits.

The prisoners Kooran, Ruhomut and Sustoo were engaged in sharing the plundered property. The prisoner Kooran might be incapacitated by old age from accompanying the dacoits on any expedition, but there is strong presumption that he used to take a share of the plunder acquired by his relatives, who committed dacoity at his instigation.

The witnesses Khoodee and Baboo Sheikh have clearly declared, that the prisoners Jadoo Chyen, Ajim Sheikh, Saboo Sheikh, Bhangur Sheikh, Buktar Sheikh and Buksoo were among the dacoits, and that Jadoo was the leader. The prisoner Jadoo clearly stated in his answer before the magistrate, that being aware, he gave information to the thannah, to the effect that these prisoners committed the dacoity in the house of the prosecutor and that they were also concerned in other dacoities, and that they were sharing the plunder. In the same way he also gave his defence before me.

From the defence of the prisoner Alladee Sheikh, it appears that the prisoners Saboo, Bhangur and Sustoo were dividing the property.

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November 3.

Case of

ALLADEE

SHEIKH and

others.

1853.

November 3.
Case of
ALLADEE
SHEIKH and
others.

It might be suspected from the statement of Jadoo himself, that he was a professional dacoit, but this has not been clearly or sufficiently proved, otherwise he would be liable to imprisonment for life. In the present case, he, as also the prisoner Alladee, appeared to have been the leaders of the gang, and are therefore liable to a heavier punishment than the others. It is further to be remarked, that in a case of theft, the said Jadoo was convicted and sentenced to three months' imprisonment. Under these circumstances, I have sentenced the prisoners as stated in the proper column.

I may remark here, that the manner in which the police officers of Dewanserai thannah have arrested the prisoners is creditable to them.

Sentence passed by the lower court.—Nos. 9 and 13 to fourteen (14) years' imprisonment each, with labor and irons in banishment; Nos. 12, 16, 17 and 18 to ten (10) years' imprisonment each, with labor and irons; Nos. 19, 20 and 21 to seven (7) years' imprisonment each, with labor and irons; and are to pay a fine of rupees 129-3-3, jointly and severally, as compensation to the prosecutor, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I find nothing in the record to make me distrust the evidence given by the two confessing prisoners; on the contrary, the other evidence and the general circumstances of the case, strongly support their statements.

The sentence is confirmed.

PRESENT:
H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT
versus
HURGOVIND DASS.

RUNGPORE.

1853.

November 5.
Case of
HURGOVIND
DASS.

Prisoners,
convicted of
perjury, sen-
tenced by the
sessions judge
to three years'
imprisonment.
Appeal reject-
ed.

CRIME CHARGED.—Perjury, in having, on the 29th November 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the officiating magistrate of Rungpore, that "on Zumurdee making a noise, Nojee, Neas, Majeet Ulla, Hajee and Tooroo (I know not the names of all,) about 14 or 15 men, came and pushed the burkundauz, and took off Zumurdee—I saw it;" and in having, on the 17th March 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Rungpore, that "I did not see them, that is the prisoners, seize Zumurdee and take him off :" such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 18th June 1853.

Remarks by the officiating sessions judge.—The prisoner is charged with perjury in having, on the 29th November 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the officiating magistrate of Rungpore, that “on Zumurdee making a noise, Nojee, Neas, Mujeet Ulla, Hajee and Tooroo (I know not the names of all,) about 14 or 15 men, came and pushed the burkundauz and took off Zumurdee—I saw it,” and in having, on the 17th of March 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Rungpore, that “I did not see them, that is the prisoners, seize Zumurdee and take him off;” such statements being contradictory of each other on a point material to the issue of the case.

Witness No. 1 deposes that he wrote the evidence taken before the magistrate, and swears that the prisoner made the statement which he wrote down, and that is the same as now read before him.

Witness No. 2 heard the deposition made before the sessions judge and swears to it.

Witness No. 3 was present and heard the prisoner acknowledge the deposition as his, before the sessions judge, and swears to it.

The prisoner, in the first instance, refuses to plead, but when called on for his defence, he says he was well and told the truth before the magistrate, but since then his wife has died and the zemindar has seized all his property for rent, and he has become foolish and does not know what he said in the sessions court.

Witnesses Nos. 4 and 7 never heard he was a fool, and believe him sane now, and that he has always been so. His wife did die and his zemindar has sold his cows, &c.

The jury disagree. The majority returning a verdict of *guilty*; the other juryman *not guilty*. I agree with the majority and sentence accordingly.

Sentence passed by the lower court.—Imprisonment with labor without irons for three (3) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—The prisoner has urged in his petition of appeal, that his deposition in the foujdary was corruptly misrepresented by the writer of it in collusion with others, he having deposed to the same effect in the foujdary as he did at the sessions court. I however observe that in his defence,

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Case of
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DASS.

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Case of
HURGOVIND
DASS.

when tried on the present charge, he admitted the correctness of his foudary statement, and excused himself for unintentionally swerving from it afterwards, on the plea that he was at the time overwhelmed with grief at the death of his wife.

I see no reason to doubt the fact of the two contradictory statements having been made wilfully and deliberately by the prisoner, and confirm the sentence passed upon him by the sessions judge.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

MUSST. SULOCHEE

versus

MOHUN.

TIRHOOT.

—
1853.

November 5.

Case of
MOHUN.

The prisoner, a chowkeedar of the village, was convicted of burglary and theft, and sentenced to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—Burglary and theft of property, valued at rupees 2-6, being a chowkeedar of the village.

CRIME ESTABLISHED.—Burglary and theft of property, valued at rupees 2-6, being a chowkeedar of the village.

Committing Officer—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 3rd August 1853.

Remarks by the sessions judge.—This case originally came before this court in appeal from the order of the joint-magistrate, sentencing the prisoner to two years' imprisonment on conviction of burglary. Adverting, however, to the provisions of Regulations XII. of 1818 and III. of 1805, and to the circumstance of the prisoner being at the time the village chowkeedar and the crime established against him burglary, the order of the magistrate was quashed and he was directed to proceed conformably to the law above cited.

The prisoner was the chowkeedar of the village of Bulwah, in which the prosecutrix, a washerwoman, lives, and her statement is, that on the night of the occurrence which led to this trial, and which was the 18th of March last or 23rd Phagoon 1260 F. S., she was asleep in her house, a matted tenement, when about midnight the prisoner effected a burglarious entrance, by cutting a passage in one of the outer-matted walls or enclosures. The prisoner first took away a bundle of washed clothes, which lay near the head of the prosecutrix, and having returned was making away with another bundle, containing unwashed linen, when his foot accidentally touched hers and she awoke. Seizing the prisoner round the waist, a struggle ensued, and although the prisoner struck the prosecutrix a

Blow with his fist, she did not let go her hold. The prisoner, however, succeeded in dragging the prosecutrix outside the house, on which the latter gave the alarm, which brought four of the neighbours (witnesses Nos. 1, *2, 3 and 4) to the spot, and they secured the prisoner with the bundle of unwashed clothes under his arm, and made him over to the *gorait*. The prosecutrix, too, gave information at the thannah. Another witness (No. 6) also identified as his a *dhotec* among the articles of linen found upon the prisoner, and which he deposited to his having given, with other things, to the prosecutrix to wash for him.

The testimony of the above and other witnesses fully substantiates the charge against the prisoner, who pleading in this court, as he had done both in the mofussil and foudary court *not guilty*, and urging in his defence, that having on the night in question caught the witnesses Nos. 1 and 2 coming out of the house of the prosecutrix and suspecting that they had gone there for a bad purpose, he took them to the gomashta, in revenge for which, he, witness Ramchurn, got up this false story in order to implicate him (prisoner.) He only called two witnesses to speak to his previous good character, which they did.

The *futwa* of the law officer convicts the prisoner on violent presumption of the crime charged, being at the time chowkeedar of the village, and declares him liable to discretionary punishment by *tazeer*, and in approval of that finding, it not appearing that the prisoner had been before convicted of any offence, sentence of imprisonment has been passed upon him, as shown in the proper column, to commence from the date of the magistrate's original order of imprisonment.

Sentence passed by the lower court.—Imprisonment with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—The conviction is good. The prisoner has urged nothing in his petition of appeal. I see no reason to interfere with the sentence passed by the sessions judge.

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November 5.
Case of
MOHUN.

PRESENT:

A. J. M. MILLS, Esq., *Judge*,

AND

H. T. RAIKES, Esq., *Officiating Judge*.GOVERNMENT AND KANGLOO NUSHA
*versus*PEAR MAHOUT (No. 20.) PANAOOLLAH (No. 21.)
AND KHEJO NUSHA (No. 22.)

RUNGPORE.

1853.

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Case of
PEAR MA-
HOUT and
others.Prisoner,
charged with
wilful murder,
convicted on
the evidence of
only an aggra-
vated assault.
Two prisoners,
charged as ac-
cessaries after
the fact, ac-
quitted.

CRIME CHARGED.—Prisoner No. 20, 1st count wilful murder of Shebah Khourah, the father of the prosecutor; 2nd count, culpable homicide of the said Shebah Khourah, and 3rd count, severe assault on the said Shebah Khourah, the father of the prosecutor. Prisoners Nos. 21 and 22, 1st count, accessories after the fact to the said murders, and 2nd count, privy after the fact to the said murder.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, at the sessions held by him for the 3rd quarter of 1853.

Remarks by the officiating sessions judge.—From the evidence before the sessions court, it is shown, that there was some dispute between the deceased and Pear Mahout, who persisted in catching fish in the deceased's ditch, and that they went away accompanied by Reshun Bewah to the zemindar's house to settle matters; that during the quarrel and in progress to the zemindar's, Pear Mahout was seen to strike the deceased, but not in a way which could possibly produce the terrible injuries shown by Mr. Taylor to have been inflicted; that on their arrival at the zemindar's house, the *mahout* made his representations to Faqueer Sircar, but what ensued does not appear, as the woman says she was ordered by her husband to return home and did so, and nothing is heard of the deceased, until he is brought home at night dying. The woman before the darogah declares that she accompanied them to the zemindar's house, and there the deceased was beaten by order of Radananath Sircar, and that she witnessed it; before the deputy magistrate, who was deputed to personally enquire into it, she denies ever having said any thing of the sort, or that she ever went to the zemindar's house; and before me she deposes to having been to the zemindar's house, but witnessed no ill usage, leaving a very strong suspicion; but she told the truth before the darogah, then was tampered with, and denied the whole, and in my court admitted a part only. When asked to account

for the difference, she says she was *bahoosh* before the deputy, although eight days had elapsed since the occurrence : she also varies in her statement as to who brought the dying man home. Again, Baoolah deposes, that he, Delachunder and Sookna were with him when the prisoners Nos. 21 and 22 carried home the dying man, but they all deny knowing any thing about it before the deputy magistrate, with the exception of Baoolah, who adheres to his story.

The prosecutor Kangaloo, son of the deceased, states he is in the employ of one Chunder Kiswar Muzoomdar ; that late on one Tuesday afternoon, in Bhadoon (he does not know the date,) he came home and found his father lying insensible, but still breathing, and that his mother told him what had happened ; and that when the zemindars told them to bring her in also, she ran away home. The three prisoners were at the house, and when he began to call out, left it. In the evening his father died, and he went and told his employer, who recommended him to go to the *mungle puddosha*, who desired him to go to the zemindar's man, Alam Sirdar, who went with deponent and saw the corpse, called the neighbours together, and then took him and the chowkeedar to the thannah, where the prosecutor told his story. There were no arrears of rent, but the zemindars, Radanath and Juggernath, fined his father rupees 1-4 in this quarrel, and ordered him to be beaten, so his mother told him.

Reshun Bewah, witness No. 1, widow of the deceased, states that one Tuesday in Bhadoor, Pear Mahout came fishing in her ditch and she forbade him ; words ensued, and he abused her and broke the bund. Shebah, the deceased, came down with a stick in his hand (he was lame.) There was a row, and in the struggle her husband fell. Pear assisted him to get up and dragged him off to complain at Radanath's house. She followed, and her husband resisting, Pear struck him and he fell across the *chowcut* insensible. She raised him up, and blew on him by order of Juggernath ; Pear then ordered him to come to Radanath, but he said he had no life in him and lay quiet, while Pear went inside. The witness went inside, and Faqueer Sircar, the brother of Radanath, enquired why his *mahout* had been beaten. She returned to her husband, who told her to go home, and he would tell her what was done ; and she went home. In the evening witness went to fetch the cows and met the prisoners Nos. 21 and 22, and asked them where they were going ; they did not answer, but hurried on towards Faqueer Sircar's house ; when she got home she found her husband there almost dead ; he still breathed, but died in the evening. Kangaloo came home and she told him every thing.

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Case of
PEAR MA-
HOUT and
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PEAR MA-
HOUT and
others.

Witnesses Nos. 2 and 3 saw the quarrel about the ditch, and Shebah taken off towards the zemindar's house. Heard of his death next day.

Witness No. 4 saw Shebah taken by a man, whom he did not recognize.

Baoolah (No. 5) saw the prisoners Nos. 21 and 22 taking the deceased home, and placing him there, sit down. Reshun began crying, asking how this had happened. They replied "We have only brought him; what fault is it of ours?" and Kangaloo coming in, began to make a noise, and they ran away. He asked the prisoners why they carried him, and they said he was ill and could not walk.

Witness Nos. 7 and 8 *sooruthal* witnesses.

Mr. Taylor (No. 9) states there was a contusion on the temple and cheek, the spleen ruptured, four ribs broken, and great extravasation of blood; and that death was caused by the violence used. The injuries on the body appear to have been inflicted by continued pressure with a heavy weight or stamping on him, or they might have been inflicted by the heel or palms of the hands, as there was no abrasion or contusion of the skin.

Defence.—The prisoners throughout deny.

Pear Mahout (No. 20) says there was a quarrel, and pleads an *alibi*: he cites four witnesses.

Raj (No. 10) heard that there was a quarrel and that Pear Mahout had beaten Shebah and killed him. Knows nothing of where he was.

Taj (No. 11) knows nothing.

Nuboo (No. 13) the same as No. 10.

Atee (No. 14) knows nothing.

Panaoollah (No. 21) and Khejo (No. 22) say they were cutting forage all day and sleeping in their houses at night.

Kanchuah (No. 15) knows that the *mahouts* one Tuesday were cutting forage in his *bustee* all day, but does not know when the occurrence took place.

Gubrah (No. 17) knows nothing.

Amatoor (No. 16) heard that the occurrence took place on Tuesday and knows, on that day, both prisoners were cutting forage.

Neshah (No. 18) knows nothing.

Sumusdee (No. 19) ditto.

Anundee (No. 20) ditto.

Futwa of the law officer.—The law officer convicts No. 20 on the 2nd count and declares him liable to *deyut*, and Nos. 21 and 22 on the 1st count, on which they were committed, and liable to *tazeer*.

I differ with the law officer. It is very evident from the deposition of Mr. Taylor, that the death of the deceased was

caused by most barbarous ill-usage and that the blows he received at the time of the quarrel, and on his way to the zemindar's house, could not have fractured his ribs, &c., which could only be done by "continued pressure with a heavy weight or stamping upon him," and I think the crime amounts to murder, of which I would convict No. 20, Pear Mahout.

The defence of the prisoners entirely fails, and I would convict prisoners Nos. 21 and 22 on the 1st count, on which they are committed. That a most cruel and inhuman murder was committed, admits of no doubt in my mind, but unfortunately the particulars are not developed, and I therefore would recommend Pear Mahout to be sentenced to imprisonment for life and Panaoollah and Khejo to fourteen (14) years' imprisonment in banishment.

The joint-magistrate has called upon the darogah to show why he should not be punished for his insufficient enquiry, and it appears to me the deputy magistrate should have called upon the zemindars, in whose house the murder took place, to tell all they know of the matter. It is true Reshun Bewah differed in her second statements from her first, but as she had before the darogah stated that she saw the zemindar there, and heard him order the deceased to be beaten, it would have been well to learn what he had to say, or knew of the matter.

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. J. M. Mills and H. T. Raikes.)—It is in proof that the prisoner No. 20 was catching fish in a ditch belonging to the deceased, and that a quarrel ensued between them. The prisoner first pushed the deceased down on the ground, who arose and struck the prisoner on the head with a stick he had in his hand. The prisoner then took the stick out of the hand of the deceased, and struck him two or three blows with it, which knocked him down. He then got up, and both went to the house of the zemindar with the view of settling their dispute, the prisoner, it is stated, pushing the deceased as they went along. From the opinion of the medical officer, it would appear that the violence stated by the witnesses was not sufficient to cause the injuries described on examining the body, and the presumption, arising from this fact and all the circumstances of the case, seems to be that the deceased was, after he arrived at the zemindar's house, barbarously maltreated, which caused his death, but there is no evidence of any kind which connects the prisoners with this maltreatment. We can therefore only convict the prisoner No. 20 of an aggravated assault. For this offence we sentence him to two (2) years' imprisonment without labor, if redeemed by the payment of a fine of rupees 40 within one month.

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Case of
PEAR MA-
HOUT and
others.

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November 8.Case of
PEAR MA-
HOUT and
others.

Against the other prisoners, Nos. 21 and 22, there is no proof of the crime charged against them. It would be very unsafe to presume that these prisoners were connected with the acts which caused the death of the deceased, because they brought him from the zemindar's house in a dying state. We therefore acquit them and direct their release.

PRESENT:

A. J. M. MILLS, Esq., }
AND } Judges.
H. T. RAIKES, Esq., }

GOVERNMENT AND MUNOHUR SAHOO
versus
GUDDYE SAHOO.

CUTTACK.

1853.

November 9.Case of
GUDDYE SA-
HOO.Prisoner,
convicted of
the wilful
murder of a boy
for the sake of
his ornaments,
sentenced capi-
tally.

CRIME CHARGED.—Wilful murder of Bhikaria, aged nine years, the son of the prosecutor, for the sake of his ornaments; 2nd count, having stolen from the person of the said Bhikaria silver ornaments, to the value of rupees 7-7-6 and 3rd count, having in his possession stolen property, knowing that it had been so obtained.

Committing Officer—Mr. R. P. Harrison, officiating magistrate of central division, zillah Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 6th October 1853.

Remarks by the sessions judge.—It appears that on Sunday evening, the 4th of September last, during the prosecutor's absence from home, his son, Bhikharia, aged 9 years, went with his sister Nukhee, aged 10 years, to witness the *koodkoonee poojah*, at the house of their neighbour Bhab Porsettee, and that at about 8 o'clock at night, Nukhee returned home alone and informed her mother that Bhikaria was missing; that Govind Porsettee, the brother-in-law of the prosecutor, with other persons, immediately searched the village, without being able to find any trace of him; but as on their going to the house of the prisoner Guddy Sahoo, with whom the deceased was in the habit of associating, he refused for a long time to open his door or make any reply to their enquiries after Bhikaria, and on his subsequently coming out of his house, he stated that some one must have killed him for his ornaments. suspicion was excited against him; and on the following evening, when the above-named child Nukhee went to the banks of the Cheetatollah river, distant 8 or 9 beegahs from the prosecutor's and prisoner's houses, she saw the body of her brother floating in the water, and on its being removed

to the bank by the aid of a *doongah*, it was discovered that the silver *chundrahars* and chain which the deceased wore round his neck, together with a pair of silver *khurroos* or bracelets, had been stolen, and that only a pair of brass *noolies* or ear-rings were left; and finger marks were traceable on his throat. Aneeroodh Mullick, the village chowkedar, then went to the police phandy at Sooknye, and there learning that the burkundauz was engaged enquiring into a case of death from the bite of a snake in another quarter, he proceeded the following morning to the thannah and gave information to the darogah, who immediately set out for the plaintiff's village, where he arrived on Wednesday morning, and after inspecting the body and forwarding it to the sunder station, arrested Guddyie Sahoo, who, between the hours of 8 and 9 o'clock P. M., produced the missing ornaments from his garden, and stated that he alone killed the deceased; but when his confession was recorded the following day, he accused Nobeen Porsettee of being his accomplice, and he repeated the accusation when taken before the magistrate.

The witnesses deposed to the above facts, and likewise to the prisoner's, having of his own free will produced the ornaments and confessed both before the police darogah and the magistrate.

The body of the deceased reached the station too much decomposed a state not to admit of the civil surgeon's forming an opinion as to the cause of death.

Before this court the prisoner pleaded *not guilty* to the crimes charged in the first and second counts, and in reply to the third, stated Nobeen Porsettee brought the ornaments and placed them in his house, and he endeavored to prove that he was in company with other persons at the time the deceased disappeared, but the witnesses cited by him denied having seen him at the time indicated.

The law officer convicts the prisoner Guddyie Sahoo, on his own confessions before the police and the magistrate, and the fact of his having produced the ornaments of the deceased from his garden, of being an accomplice in the murder of Bhikaria and stealing his ornaments, and declares him liable to *kissas*, and in this verdict I concur; for though it would appear that at least twelve hours intervened between the apprehension of the prisoner and his producing the ornaments (which took place at night,) and he was improperly detained in the mofussil twenty-four hours after his confession was recorded, though it was not written till the morning after he had produced the ornaments, I see no reason to doubt the genuineness of his confessions; and I

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Case of
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consequently propose that sentence of death should be passed upon him.

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GUDDYE SA-
hoo.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and H. T. Raikes.)—The prisoner confessed before the police and the magistrate, that he held the hands of the boy, while his associate in the crime strangled him; that he took the ornaments which the deceased wore, and produced them from his garden, where he had buried them. The confessions, and the production of the ornaments are proved by credible evidence, and leave no doubt of the prisoner's guilt.

There are no circumstances in the case of an extenuating nature, and convicting the prisoner of wilful murder, we sentence him to suffer death.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT AND KUDDUR PUTTAR

versus

CHAMAROO NUSHA (No. 27,) MANEEKAH NUSHA.
(No. 28), MOOCHAR TENTAH (No. 29,) AND NUMEE
NUSILA (No. 30.)

RUNGPORE.

1853.

November 11.

Case of
CHAMAROO
NUSHA and
others.

Conviction
and sentence
passed by the
sessions judge,
in a case of
riot attended
with culpable
homicide, up-
held in appeal.

CRIME CHARGED.—1st count, riot attended with culpable homicide of Suddra Puttar and wounding of Bhikaree; 2nd count, accomplices aiding and abetting in the commission of the said crime.

CRIME ESTABLISHED.—Prisoner No. 27, riot attended with culpable homicide of Suddra Puttar, and wounding of Bhikaree, and prisoners Nos. 28, 29 and 30, accomplices aiding and abetting in the commission of the above crime.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 26th July 1853.

Remarks by the officiating sessions judge.—It is clearly shown on the trial, that one of the four prisoners had an intrigue with a female relative of the deceased, and that Nos. 28 and 30, on the night of the occurrence, went to the house of Sadoollah (witness No. 4), where they supposed she was, to demand her; the other two prisoners, Nos. 27 and 29, joined them, and a general riot ensued, in which the deceased was killed and Bhikaree wounded. It is clearly proved that No. 27 struck the blow which killed Suddra. Mr. Taylor, the apothecary, states—"Instant death might have ensued, and insensibility would have immediately followed the injury," which he describes

as an "extensive fracture of one of the bones of the head, (the right parietal,) a portion of which was depressed and pressing on the brain : there was also extensive extravasation of blood within the head. I also noticed an extensive contusion on the back over the left scapula." And that the other three prisoners were actively engaged in assisting him and beating Bhikaree. The prisoners simply deny the facts and say the deceased and his party attacked them ; that there is a quarrel about the woman, with whom No. 27 intrigued, and that the whole is a matter of enmity, and they know nothing of Suddra's death. No. 28 alone calls a witness, who can say nothing about the matter.

The law officer convicts No. 27 on the 1st count, and Nos. 28, 29 and 30 on the 2nd count, and I agree with him.

Sentence passed by the lower court.—Imprisonment each with labor and irons, No. 27 for seven (7) years, and Nos. 28, 29 and 30 for five (5) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoners, in their petition of appeal, merely ask that the papers may be sent for and the case revised. They do not attempt to show, however, that there has been any failure of justice, and on perusal of the record I find no flaw.

The sentence is confirmed.

1853.

November 11
Case of
CHAMAROO
NU SHA and
others.

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND BADOO SHEIKH
versus

MUBOO NUSHA CHOWKEEDAR (No. 13) AND
HUBOOLLA MUNDUL (No. 14.)

RUNGPORE.

1853.

November 11,

Case of
MUBOO NUSHA
CHOW-
KEEDAR and
another.

Two prisoners, convicted as accomplices in burglary in two cases, sentenced to eight years' imprisonment by the sessions judge. In appeal the sentences were reduced to three years and two years respectively.

The fact of the prisoner's being the chowkeedar of a different village from that in which the burglary occurred is immaterial as to the commitment. (See Construction No. 375.)

CRIME CHARGED.—*Trial No. 8.*—1st count, burglary in the house of the prosecutor, and stealing therefrom property valued at Company's rupees 2-14-6; 2nd count, accomplices and aiding and abetting in the commission of the said crime, and 3rd count, prisoner No. 13, with having in his possession property acquired by the said burglary, knowing it to have been so obtained.

Trial No. 9.—1st count, attempt to commit burglary in the house of the prosecutor; 2nd count, stealing from the prosecutor's house-property valued at rupees 1-5; 3rd count, accomplices, and aiding and abetting in the commission of the said crime, and with 4th count, prisoner No. 13, having in his possession property acquired by the said theft, knowing it to have been so obtained.

CRIME ESTABLISHED.—Accomplices and aiding and abetting in the commission of burglary.

Committing Officer.—Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 22nd July 1853.

Remarks by the officiating sessions judge.—*Case No. 8.*—This and the following case are so closely connected, the witnesses and prisoners in both being the same, that one statement will answer for both.

It appears that one Monday night in Bysakh, Badoo Sheikh, after his evening meal, had gone to sleep, from which he was roused by the crying of his child, and he then discovered his house had been burglariously entered; he went outside and saw some three or four men standing at the back of his house and striking one (Muboo, No. 13) with a piece of wood, secured him, whilst the other fled. Muboo then confessed to having committed a burglary, in company with several others, in the house of Badoo Sheikh, and having attempted one at Shurep's house, but that failing in effecting an entry, they satisfied themselves with stealing a plough and two *kodalees* from his cow-house; and that the whole of the property obtained from both thefts was buried under a tree he pointed out, and then it was all discovered. The men he implicated were arrested, and one Huboolla confessed in his participation in both cases. These confessions are duly attested and proved before me. They are

reiterated before the magistrate, and the cases are both clearly established by the evidence of several witnesses.

The prisoners before this court plead *not guilty*. Muboo (No. 13) declared he was seized, called a thief, and beaten till he confessed. No witnesses. Huboolla (No. 14) admits his confessions.

Case No. 8.—The law officer returns *guilty* on the 2nd count, and I agree.

Case No. 9.—The prisoner Muboo (No. 13) pleads *guilty* to 3rd count.

The prisoner Huboollah, (No. 14) pleads *not guilty*, but says he went with the other prisoner Muboo, and offers no defence.

The law officer finds *guilty* of 3rd count, and I agree with him.

The circumstance of Muboo being a chowkeedar does not call for an enhancement of punishment, as the village in which the crimes were perpetrated was not under his charge, and I consider eight (8) years with labor and irons, a sufficient punishment.

Sentence passed by the lower court.—Nos. 13 and 14 to eight (8) years' imprisonment with labor and irons, each in aggregate, for cases Nos. 8 and 9.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The conviction is good in both this case and the next, but the sentence is much too severe. Had not one of the prisoners been a chowkeedar, the magistrate might himself have disposed of the charges under Regulation VI. of 1824.

I cannot concur in the opinion of the sessions judge, that "the circumstance of Muboo being a chowkeedar does not call for an enhancement of punishment, as the village in which the crimes were perpetrated was not under his charge." The law draws no such distinction. It requires that all cases, in which a person convicted of burglary, may have been a guard at the time of the offence, must be committed to the sessions, the object being of course to insure a heavier punishment than it is competent to a magistrate to inflict.

Punishment should ever be proportioned to the nature and enormity of the offence. In this case the value of the property stolen (and recovered) was small. It would be to subject the State to a needless expense, and otherwise objectionable to subject the prisoners to the same measure of punishment unusually awarded to the commission of dacoity. I therefore annul the sentence of the sessions judge and sentence Muboo chowkeedar to imprisonment for three (3) years, and Huboollah for two (2) years, both with labor in irons.

This order covers both cases.

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November 11.

Case of
MUBOO NU-
SHA CHOW-
KEEDAR and
another.

PRESENT :
J. DUNBAR, Esq., Judge.

SHEIKH GOLAM RUSSOOL AND GOVERNMENT
versus

JADUB DOOLEA (No. 1,) KALOO DOOLEA (No. 2,) APPELLANT AND HORAY HAREE (No. 3) APPELLANT.

HOOGHLY.

CRIME CHARGED.—Dacoity.

1853.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. C. S. Belli, magistrate of Hooghly.

November 12.

Case of
KALOO Doo.

Tried before Mr. J. S. Torrens, sessions judge of Hooghly, on the 15th August 1853.

LEA and
others.

Remarks by the sessions judge.—Prisoners plead *not guilty*. No. 1 confessed before the police and magistrate.

Two prisoners,
convicted
of dacoity by
the sessions
judge, acquit-
ted in appeal.

The prosecutor was absent, where he is employed as dewan of a zemindar, from his house, the night it was attacked by the dacoits.

He deposes, that on the next morning early his servants, witnesses Nos. 2 and 3, came to him there, and informed him of dacoity and the property stolen, and that they had recognized by the light of the *mussals*, prisoners Jadub (No. 1,) Kaloo (No. 2,) and Horay Haree (No. 3.)

These two witnesses depose to the same effect before the sessions, as does also Nipal Chowkeedar (No. 1,) who gave information to the thannah the morning after the dacoity, mentioning that he had recognized these prisoners in the same way. The confession of No. 1 was taken on the 3rd July ; he states that the other prisoners had induced him to go with them, and proceeded along with others to commit the dacoity. Considering the crime established by the recognition of the witnesses above-mentioned, coupled with the confession, I have convicted the prisoners and sentenced them to nine (9) years' imprisonment in labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Prisoners Nos. 2 and 3, Kaloo Doolea and Horay Haree, only have appealed. I cannot say that I am satisfied with the evidence against them. To mere alleged recognition, unless supported by some strong circumstantial evidence, such as the finding of stolen property, I attach no great value, and I do not think that implication by a confessing prisoner is a circumstance of such a nature as to relieve such recognition of the doubt which must always attach to it in this country ; he may be either intentionally implicating others falsely, or he may be doing so at the instigation of others.

The prisoners allege that there is enmity between them and the parties who have given evidence against them about lands. This is not improbable, as they are inhabitants of neighbouring villages. Moreover, the *alibi* pleaded in defence is well established by the witnesses.

I acquit the prisoners Kaloo and Horay and direct their immediate release.

1853.

November 12
Case of
KALOO DOO-
LEA and
others.

PRESENT :
H. T. RAIKES, Esq., Judge.

GOVERNMENT AND JOYABOISTOBEE
versus

SUROOP DEEGAR (No. 4,) SUDAM GOORAT (No. 5,) DUNADUN ALIAS DUNA NAIK (No. 6,) MOOCHEERAM DULLYE (No. 8,) BHUJA BAGTEE ALIAS BHUJOHUREE KHAN (No. 11,) ISSA PURREEA (No. 12,) AND MOOCHEERAM MANJEE (No. 13.)

CRIME CHARGED.—Dacoity in the house of Joyaboisto-bee, and plundering therefrom property to the value of rupees 183-8, and slightly wounding the said Joya; prisoners, Nos. 4, 5, 6, 8 and 11, 2nd count, knowingly receiving and keeping in possession property obtained by the above dacoity; prisoners Nos. 4 to 6, 8 and 11 to 13, 3rd count, belonging to a gang of dacoits.

MIDNAPORE.

1853.

November 12
Case of
SUROOP DEE-
GAR and
others.

Prisoners, convicted of dacoity with slight wounding, sentenced by the sessions judge to nine years' imprisonment each. Appeal rejected.

CRIME ESTABLISHED.—Dacoity with slight wounding.
Committing Officer—Baboo Jogeschunder Ghose, deputy magistrate, exercising powers of a magistrate at Gurbettah.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 2nd August 1853.

Remarks by the sessions judge.—The prosecutrix deposes, that on the night of the 2nd June last, her house was attacked and robbed of jewels, money and other articles of property to the value of rupees 183-8. Her suspicion fell upon the prisoner No. 4, Suroop Deegar, and No. 5, Sudam Goorat, and accordingly the police proceeded to arrest them. The prisoners were absent from their house when the police first visited it, but the wife of prisoner No. 4 then admitted, that on the previous Thursday night, the prisoner had brought home a small brass *lotah*, which they hid in the thatch of the house. The prisoners returned home, whilst this enquiry was going on, produced the *lotah* and confessed to having committed the dacoity in her (prosecutrix's) house, and denounced their accomplices, who also confessed to the robbery and pointed out where the rest of the property was concealed. The prisoners all plead *not guilty* in this court

1853.

November 12.

Case of
SUROOP DEE-
GAR and
others.

and cite witnesses, who can depose nothing in their favor. Before the darogah, the whole of the prisoners confessed to having committed the dacoity, and the prisoners Nos. 4, 6, 8, 11, 12 and 13 repeated their confessions before the magistrate. It is clearly proved by the evidence, that the prisoners followed up their confessions by producing the plundered property, Nos. 1 to 22. The prosecutrix before the court could at first give no satisfactory account of how she acquired property, so evidently beyond her means, and a suspicion was thereby excited, that either the fact of the robbery having occurred in her house was untrue, or that some important points had been suppressed. It subsequently turned out on cross-examination, that the prosecutrix is the mistress of the aymadar of the village in which she lives, and the property stolen had from time to time been given to her by him. It is in evidence, that the nature of the prosecutrix's connexion with Hurrischunder Mookerjea, the aymadar, is notorious in the village and its neighbourhood ; that the latter was present counselling and assisting, whilst the darogah was carrying on his enquiry regarding the robbery, and that the darogah was equally cognizant of the fact of prosecutrix being Hurrischunder's mistress. He, however, throughout his proceedings, carefully avoids all allusion to the aymadar, and his object, the witnesses say, was to save him (the aymadar) who is a high-caste brahmin from being summoned to give evidence. The conduct of the darogah, in conniving at and aiding in the concealment of facts so important to the issue of the case, for which, no doubt, he received an equivalent, is highly reprehensible, and for which he should be called on to account. The deputy magistrate did not attempt to elicit the truth by examining the prosecutrix and the witnesses, as to how, when and where she had acquired the property : the absence of satisfactory proof on that head threw a doubt on the whole of the proceedings, which, without being satisfactorily cleared up in this court, must have been fatal to the case. It must be observed also, that the aymadar, Hurrischunder, was never called on to explain, why, as proprietor of the village, he never reported the robbery to the proper authorities, as required by law. Had the deputy magistrate noticed the omission, as he ought to have done, the particulars of Hurrischunder's connexion with the case would at once have been discovered and this court relieved of much doubt and suspicion of the truth of the confessions : there can be no doubt, as they are consistent and fully borne out by the evidence. The prisoners in this court allege, that their confessions were extorted by ill-usage, but they fail to prove it, or assign any good reason why

they repeated their statement so consistently before the deputy magistrate. The prisoner No. 5, Sudam Goorat, denied his guilt before the deputy magistrate, but his complicity in the robbery is otherwise established by the discovery of the stolen *lotah* in his house, and by his pointing out other property concealed in the jungle. The prisoners are accordingly convicted on the first count of the charge and sentenced, as shewn in the statement.

Sentence of the lower court—Seven (7) years and two (2) years more in lieu of corporal punishment, total nine (9) years imprisonment each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoners have been convicted on their own confessions, corroborated by the production of the stolen property from the spot where the gang had concealed it. They now seek to repudiate their confessions, on the plea that they were extorted from them by ill-usage; but there seems no reason to believe this, as the confessions, with one exception, were repeated in the presence of the deputy magistrate. I see no reason to interfere with the sentence passed upon any of the prisoners.

1853.

November 12.
Case of
SUROOP DEE-
GAR and
others.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND SREEDHUR BISWAS
versus

HURRIBOLE GHOSE (No. 1,) GOPAL SIRDAR (No. 2.)
BATOOL SHEIKH (No. 3,) MUDUN SHEIKH ALIAS
MODIA MUSSULMAN (No. 4,) PUCHKOWREE
SHEIKH (No. 5,) SHONAI SHEIKH (No. 6,) SHAM
SHEIK (No. 7,) NOBIN DOOLIA (No. 8,) SHARBO
GHOSE (No. 9,) MOKARIM ALIAS MOKIA SHEIKH
(No. 10,) AND HADI SHEIKH (No. 11.)

NUDDEA.

1853.

November 14.

Case of
HURRIBOLE
GHOSE and
others.

In a conviction
of dacoity
with wound-
ing, in which
all the prison-
ers were sen-
tenced by the
sessions judge
to nine years'
imprisonment,
four of them
were acquitted
in appeal.

CRIME CHARGED.—Dacoity in the house of the prosecutor, Sreedhur Biswas, attended with the wounding of the witness No. 3, and in which property to the value of rupees 67-12 was plundered.

CRIME ESTABLISHED.—Dacoity in which property to the value of rupees 67-12 was plundered and witness No. 3 was wounded.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.*

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 6th August 1853.

Remarks by the sessions judge.—In this case there are the recorded confessions of prisoners Nos. 2, 7 and 11, as also the evidence of witnesses Nos. 1 and 2, who were in the first instance implicated in the commission of the crime, but were admitted as evidence against the others.

There are no circumstances of any extraordinary nature connected with this dacoity, different from every other case of the same sort, to render it worthy to be brought prominently to the notice of the Court, nor was the crime attended with any aggravating circumstances. The prisoners, with the exception of Gopal and Hadi, being inhabitants of Nublah and Ghazee-pore villages, distant about 5 or 6 coss from the prosecutor's residence, were unknown and could not therefore be recognized by the eye-witnesses, but from the evidence given by the two Jadoos, Nos. 1 and 2 of witnesses to the fact, the party was collected by Shonai Sheikh, and conducted to Intilliah, where the prosecutor lives. When they got near the village, Shonai entered it alone, and returned with Gopal and Hadi, who brought the weapons they would require in making the attack. They then proceeded to commit the robbery. To prove the facts, the magistrate admitted the two Jadoos as evidence against the rest, which it would have been difficult, otherwise to have done.

There are some other persons named in the evidence, Obhoy Ghose, Nyan Sheikh, Sadoo Ghose and Modhoo Choro, as being implicated in this dacoity, whom the magistrate has not yet committed, as the charge is not, in his opinion, sufficiently proved against them. The term "wounding" has been introduced into the charge, but it was not any thing of consequence. The prisoners pleaded *not guilty* before me, but they did not cross-question the witnesses, and though seven of them pleaded an *alibi*, they did not prove it. The prisoners have appealed to the Nizamut Adawlut.

Sentence passed by the lower court.—Seven (7) years' imprisonment and two (2) years in lieu of corporal punishment, being in aggregate nine (9) years each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence of the two Jadoos is to this effect. Jadoo 1st, having first confessed his own guilt, then gives evidence to the commission of the dacoity, having been present. Jadoo 2nd, having admitted in his mofussil confession that he was present, denied his personal presence in all his subsequent statements, and spoke to the fact of the dacoity only on the authority of Mokarim ; his own knowledge going only to the extent of having seen a body of men assembled together with the intention of committing dacoity in the village of Etneea : his testimony may be received as corroborative of that of Jadoo 1st, in regard to those prisoners whom he named in his first statement to the darogah ; and on this evidence I uphold the conviction in regard to Batool, Mudun, Shonai, and Nobin. The conviction of Gopal Sirdar, Sham and Hadi is good upon their own confessions. The evidence against Hurribole, Puchkowree, Sharbo Ghose, and Mokarim is insufficient. The three first are named only by Jadoo 1st in the original statements of the two principal witnesses, and the latter only by Jadoo 2nd. I accordingly acquit these men, and direct their discharge.

1853.

November 14.
Case of
HURRIBOLE
GHOSE and
others.

PRESENT :

A. J. M. MILLS, Esq., Judge.

GOVERNMENT AND IMAM ALI
versus

RUNG LALL MISSER alias GHORA PANDAY.

PATNA.

1853.

November 16.
Case of
RUNG LALL
MISER alias
GHORA PAN-
DAY.

Prisoner convicted of the theft of a gun and having been previously convicted of horse-stealing, sentenced by the sessions judge to sixteen years imprisonment. In appeal the sentence was confirmed, but the conviction changed to highway robbery, the offence having been committed by three persons unarmed, sufficient to constitute a gang.

CRIME CHARGED.—1st count, highway robbery of an English gun and a cap, valued at rupees 101-8, and 2nd count, theft of an English gun and a cap, valued at rupees 101-8, from the hands of the prosecutor, accompanied with violence.

CRIME ESTABLISHED.—Theft of an English gun and a cap, valued at rupees 101-8, from the hands of the prosecutor, with violence.

Committing Officer.—Mahomed Nazim Khan, principal sunder ameen of Patna, vested with full powers of a magistrate.

Tried before Mr. B. J. Colvin, commissioner, with full powers of a sessions judge, on the 12th August 1853.

Remarks by the commissioner.—The prosecutor, about 8 o'clock on the morning of the 1st July last, was proceeding from a gun-smith's, with a gun in his hand, which he had left with the gun-smith the previous day for repairs. These having been effected, he was taking it home, the gun-smith accompanying him for payment, when, in one of the streets of the city of Patna, he was accosted by the prisoner and two others, Gubdoo and Monee (not apprehended) and the gun was wrested out of his hands by the prisoner and his cap taken from his head by Monee. All three then made off, and the prosecutor has never seen his property since. In the scuffle, he got a wound on his forehead from the gun, the mark of which is still visible. He immediately lodged a complaint at the thannah, and the darogah referring him to the magistrate, he presented a petition on the same day, when an enquiry was ordered, which ended in the apprehension of the prisoner on the 8th idem.

The law officer does not convict the prisoner of the 1st count, because the crime took place in the day and in the city, but only of the 2nd count. As the prisoner cannot be legally convicted on the 1st count, I have concurred with the law officer.

The act was a most daring one, committed in broad daylight and in the public street.

The prisoner was sentenced on the 28th November 1850 to two (2) years' imprisonment for horse-stealing.

I have sentenced him, under the provisions of Clause 5, Section VIII. Regulation XVII. of 1817, to fourteen (14) years'

imprisonment with labor and irons, and to two (2) years more in lieu of stripes, altogether sixteen (16) years in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoner has appealed. He states that he was not in the city at the time of the robbery, and that the prosecutor has brought this false accusation against him, at the instance of one Kishen Chuprassee, but these pleas are unsupported by any evidence or presumptions. The prosecutor had no previous acquaintance with the prisoner, and I see no reason to doubt the truth of his and the eye-witnesses' statements. The proof against the prisoner is complete. The sessions judge has not stated why the prisoner cannot be legally convicted on the first count. It appears that the prosecutor was attacked on the high road by *three* persons ; one wrested the gun out of his hands, and the other snatched his cap from his head. The robbers were unarmed, but as three persons are sufficient to constitute a gang, the offence of the prisoner clearly amounts to robbery by violence, as defined in Clause 1, Section III. Regulation LIII. of 1803. I convict the prisoner of highway robbery, and confirm the sentence passed on him by the sessions judge. If the robbery had not fallen within the definition of robbery by open violence, the sessions judge should have convicted the prisoner of forcibly taking property from the person, in accordance with the general practice. (See the Court's Construction No. 228, and the cases therein quoted.)

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Case of
RUNG LALL
MISSER alias
GHORA PAN-
DAY.

PRESENT :

A. J. M. MILLS, Esq., }
 AND } *Judges.*
 H. T. RAIKES, Esq., }

GOVERNMENT

versus

BUNGSEEBUDDUN SIRCAR (No. 16) SHEIKH SHURFUDDEEN MUNDUL (No. 17,) SHEIKH RUHEEMOOLLAH (No. 18,) SHEIKH ULLEEMOOLLAH (No. 19,) SHEIKH ANUND PRAMANICK (No. 20,) SHEIKH MUNNOO (No. 21,) SHEIKH FURZANOOLLAH (No. 22,) SHEIKH DOKHUL (No. 23,) SHEIKH RAJAI (No. 24,) RAM CHUNDER CHOWDREE (No. 25,) CHUDERNATH DASS (No. 26,) PUDDOLOCHUN CHUCKERBUTTY (No. 27,) SHEIKH SHUMSOODDEEN (No. 28,) SHEIKH CHERAG ALEE (No. 29,) OODOO (No. 30,) AND SHEIKH BAZOO KHALASEE (No. 31.)

DACCA. CRIME CHARGED.—Mutual affray, wherein Punjoo and
 1853. Rajai of the 1st party, and Odoo and Bazoo of the 2nd party, were slightly wounded, and Arzan and Nagardee of the 1st party were carried off by the 2nd party, and are since missing.

Case of BUNGSEE-BUDDUN SIR-KAR and others. Committing Officer—Zynooddeen Hossein, deputy magistrate of Manickgunge.

Tried before Mr. G. P. Leycester, officiating sessions judge of Dacca, on the 24th September 1853.

Remarks by the officiating sessions judge.—The prisoners in this case are charged, Government being prosecutor, with an affray, in which four men are said to have been wounded and two carried off, but it does not appear from the record why the allegation of the abduction of two others should not also have been made a subject of charge.

The evidence of the witnesses Nos. 1 to 5 is briefly as follows : that on 19th Aghun, 3rd December last, some ameens and khalasees of the Chamta factory, belonging to Mr. Wise, went with about 20 ploughs, bags of indigo seed, ploughmen and coolies, the party in all may have numbered 40 or 50, to some land near the village of Madhubpore, to sow indigo. They had commenced operations, when the villagers, in a large body of 200 or 250 men, armed with swords, spears and shields, attacked and beat them, and carried off four men prisoners, a plough, two bullocks, and two or three bags of indigo seed.

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Case of
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 BUDDUN SIR-
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 others.

The substance of the testimony of the witnesses Nos. 6 to 10 is, that the factory people, in numbers varying from 500 to 700, similarly armed, attacked the village of Madhubpore, with the intention of plundering it, when six or eight of the villagers, attended by two police burkundauzes, who had been deputed there, came forward and objected to their proceedings, when the factory people wounded four of their number, two of whom they carried off, as also some property, from the houses of Ruheemoolah (prisoner No. 18) and Ulleem-oollah (prisoner No. 19) but did not plunder the village. Apprehending such an attack, the villagers of Madhubpore had removed all their females from it, and only men were left.

That of the burkundauzes is, that they were deputed by the darogah and took up their abode at Madhubpore. The next morning, the 17th Aghun, they heard that bands of men, on part of Mr. Wise and Radhanath Baboo, proprietor of Madhubpore, were concealed in various places. Went to look for them at the Chamtah factory and several villages belonging to it, but did not find such to be the case on either side. Madhubpore has a population of 300 or 400 persons. On the morning of the 19th Aghun—3rd December, heard a noise to the north of the village, went and saw 400 or 500 armed men, accompanied by two men on horseback, coming from the direction of Chamtah factory with ploughs and indigo seed, and arriving at the east of Doree Madhubpore were about to sow it, when 200 or 250 villagers armed with shields, swords and spears, &c., issued forth, and both parties fought near Ruheemoolah's house. Four villagers were wounded, two of whom the factory people carried off. Two of the attacking party, Odoo and Bazoo (prisoners Nos. 30 and 31,) who came to seize and carry off the other wounded men, were taken prisoners by the burkundauzes and villagers, and defeated in their object. The fight lasted one *puhur* or three hours, and at last the factory people were driven off.

The witnesses Nos. 13 and 14, to the confessions of the prisoners Odoo and Bazoo, swear that the darogah compelled them to sign a paper at midnight, but that no one confessed before them.

Of the witnesses Nos. 15 and 16, circumstantial evidence, the first states nothing of importance to the issue of the case. The second describes, that at day-break he saw about four or five hundred men coming from the direction of Chamtah factory towards Madhubpore, and for fear hid himself in the house, from which he heard the sounds of clubs. In about $1\frac{1}{2}$ *gurree*, or $1\frac{1}{4}$ minutes, came out and saw that the Madhubpore people had driven off the factory people and had taken possession of ploughs, cattle, and bags of seed.

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The *futwa* of the law officer convicts all the prisoners but two, Ruheemoollah and Ullemoollah, (Nos. 18 and 19,) of affray, and the factory people carrying off Arzan and Nagardee, and sentences them to *tazeer*, but in this finding I cannot concur. If the conflicting evidence of both sets of witnesses is to be relied on, we fall into a maze and labyrinth of hard swearing, from which there is no extrication, and the innocent and guilty are equally liable to suffer.

To avoid this, I have considered the position of the parties before the occurrence, as shown in the record: it is as follows:—

Some lands, designated variously as Chur Beenodeean or Ramkistopore, Turf Madhubpore or Chamtah, Tuppeh Shaista-nuggur, have been a bone of contention between the owners of Chamtah factory and the owners of Madhubpore for years. Passing through the criminal courts, the land, or a portion of it, became the subject of a suit in the civil court, where it was referred to an arbitration, and the case erased from the file; the arbitrator died and no one prosecuted the case.

Six days before the occurrence, which is the subject of this trial, Furzanoollah (prisoner No. 22) and others complained to the deputy magistrate of Manickgunge, that the factory people had ploughed up villagers' crops and obtained an order for the darogah to proceed at once to the spot. A subpoena was also granted and should have been immediately taken out, but this was not done.

I rather suspect this petition was a ruse, or it may have been an anticipatory measure to obtain the aid and countenance of the police, that a coloring of legality might be given to any proceeding the villagers of Madhubpore might hereafter think proper to adopt, for they were fully prepared for a fight and had sent off all their women in anticipation, but no such preparation is apparent on the part of the factory people. The burkundauzes found no body of men assembled, though they searched at the factory and villages belonging to it.

The object of the factory people was to sow the land, which, there is reason to suppose, they first tried to persuade the villagers to do, and on their not acceding, determined to do so themselves, and from a *roboocaree*, dated 12th of May 1858, it would appear that the possession of it was in the factory people.

That if the villagers were to prevent this and possibly, if Furzan's allegation of destruction of crops is true, to retaliate, but as they had complained to the deputy magistrate and obtained the protection of his court, they should never have taken the law into their own hands, but have waited the arrival of the darogah.

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The factory people, even by the showing of their opponents, were driven back with two of their number taken prisoners, which fact is indisputable, with the loss of a plough, bullocks and seed.

The others maintained their ground, got burkundauzes to report as they wished, and to accuse in that report by name parties whom they afterwards ascertained, on view, not to be the men, although one of the burkundauzes had seen one of them before.

The witnesses who allege that the factory people, in numbers varying from 500 to 700, attacked the village for plunder, are all of the village Madhubpore. Their allegations and testimony are inconsistent against probability, and extravagant. They vary in that part of their evidence, tending to inculpate two *sahibs*. They contradict each other as to the manner in which Arzan and Nagardee are said to have been carried off, and how they lost sight of the body of men who bore them away. After the search made unsuccessfully by burkundauzes for assembled bodies of men, it is improbable that so large a body was brought into the field; when or how they came is an enigma, and how they went is equally inconceivable, for no explanation is given. It is also very improbable, if their side was so much the strongest, that they should have been driven back, leaving two prisoners in the hands of their opponents, with a plough, bullocks and three bags of indigo seed, all of which is borne out by the evidence. No reasonable cause for their retreat, or for desisting from carrying out their intention of plundering the village, is given, and none whatever for the courage evinced at last by the burkundauzes in seizing two of the parties from whom they had just retreated through fear. As to the two ~~men~~ on horseback, the evidence of the villagers and burkundauzes are diametrically opposed.

The evidence on the other side is consistent, and their story probable in the main. They went to plough and sow indigo; they took ploughs, bullocks and seed, which, if only plunder was their object, it is improbable that they would have done. They did plough, and allege, while they were doing so, the villagers came out in a body of 200 or more and attacked them. From the fact of villagers having removed their families from the village, there is no doubt that they were quite prepared for a fight and pre-meditated it, and when the countenance of the police ~~was~~ obtained, attacked the men who were ploughing. These may have, and in self-defence probably did retaliate, but that they wantonly attacked the village is, I think, not proved, and is a supposition totally at variance with the whole tenor of the evidence and circumstances of the case.

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others.

The policemen even allow, that 200 or more of the villagers attacked the factory party, when they were about to sow indigo, not when they came to plunder the village, and witness No. 16, Hurce Mohun Day, also supports the statement of the defeat of the factory people; and the carrying off their ploughs, &c. &c.

I doubt the carrying off of the people ; it is not proved ; such allegations are easily made to enhance the charge. In regard to Arzan and Nagardee's abduction, there is great contradiction. In regard to that of Neamut and Lall Mahomed, I am not satisfied ; for the latter, who has been recovered, was found in a way which leaves it quite doubtful in whose custody he really was when released. Of the capture and detention of Odoo (prisoner No. 30) and Bazoo (prisoner No. 31,) there is no doubt.

I disbelieve the story of the first party : it is not proved. I am of opinion, that they pre-meditated an attack and carried out their purpose, when others were sowing indigo on land of which possession had been awarded them, and have got up a false counter-charge. I would acquit all the second party, *viz.* prisoners Nos. 25 to 31, and consider the others, from Nos. 16 to 24, guilty of a riotous assault in a large body, armed with dangerous weapons, on the people of the Chamtah indigo factory, in which Odoo and Bazoo were slightly wounded and taken prisoners, and that five (5) years' imprisonment each, with labor, is an adequate punishment.

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. J. M. Mills, and H. T. Raikes.)—After perusing the evidence on record in this case, and making due allowance for the exaggerations and evident bias of some of the witnesses on both sides, we come to the conclusion, that the affray was mutual and pre-meditated by both parties, consequently that all those engaged in it are equally culpable.

The sessions judge has acquitted the factory people on no substantial grounds. He argues, that because the allegation of the villagers, that the factory people came to plunder the village, did not prove to be true, they must have gone to sow the lands without any intention of resorting to force, and were attacked and driven away by violence. But there is quite sufficient on record to show that the factory people were well aware of the villagers' determination to resist them, of their having complained to the police against them and procured the assistance of burkundauzes from the thanmukhi to protect their village, and made every preparation for defence and resistance. Under such circumstances, is it impossible to suppose the factory people went with only the few ploughmen and coolies necessary to sow the lands, and yet awaited the

attack of the villagers, and only fled when they got worsted, after wounding some of their assailants. The evidence of the witnesses is far more entitled to credit to the extent, that the factory people were equally prepared to carry out their object by violence, and that in consequence of the collision, which took place between men so determined, an affray ensued, in which parties on both sides were wounded. We can give no weight to the judge's opinion, that the lands contended for were the right of the indigo planter. Their possession was clearly a matter then in dispute, and the attempt to sow them *vi et armis* with a body of armed retainers, to oppose the villagers who claimed them, was a breach of the law, for the consequences of which those engaged in it are liable to punishment; and as we consider all the prisoners before us are proved by the evidence to have been aiding and abetting in an affray attended with slight wounding, we convict them of that offence and sentence them to three (3) years' imprisonment, with a fine of rupees 50 each, in lieu of labour, payable within one month.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT
versus

SHEIKH HAFIZOOLLAH MUSSULMAN (No. 12) AND
SHEIKH BUCKTOUR MUSSULMAN (No. 17.)

CRIME CHARGED.—1st count, dacoity in the house of Jeetoo Nikamee, at Damoordah, in which property to the amount of rupees 514-1 was plundered, and 2nd count, having belonged to a gang of dacoits.

Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 10th September 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the commissioner for the suppression of dacoity, and are charged, 1st count, with dacoity, and 2nd count, with having belonged to a gang of dacoits. They plead *not guilty*.

The evidence against the prisoners is the testimony of four approvers, who accompanied them off the particular dacoity in question, and were for the most part associated with them in others committed under the leadership of known dacoits.

The affair, especially under notice, was planned in the suburbs of Calcutta, and executed under the guidance of the ap-

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Ca. of
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and another.

Two prison-
ers, convicted
of dacoity and
of having be-
longed to a
gang of da-
coits, sentenced
to transporta-
tion for life.

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and another.

prover, Koilas Tanti. The gang embarked in two boats at the Baug Bazar ghaut, stopped at Baranagore and Teleniparah, to ship hands ; moored at Bhatparah, where they passed the night ; proceeded the following morning to Gustea, and remained at Sooksaugur, until it was time to go across the river to the house intended to be attacked. The gang landed at Damoordah about half past 10 p. m., and after performing *kali-poojah* and making the necessary preparations, proceeded to the attack. The house was approached and entered in two directions. Koilas, the prisoner Bucktour, and another, climbed up to the roof by means of a long bamboo placed against the building, and one Bungsee Ghose was helped over the wall by his comrades, who opened the outer gate and admitted the gang. The work of plunder was then consummated and the dacoits were obliged to make a precipitate retreat to their boats, a hue and cry having been raised after them by the residents.

The prisoner Hafizullah Mussulman denies the charge, but makes no defence beyond asserting his fidelity and devotion to his master's service. He is a *mahout* by calling, and states that he was in daily attendance on Mr. Higgins of Calcutta, while that gentleman was on a visit at Cossipore during the last *doorga poojah* holidays, his master, Rajah Suttichurn Ghosaul, having placed his elephant at the disposal of Mr. Higgins. He calls one witness, who only speaks to the fact of serving the same employer as the prisoner.

The prisoner Sheikh Bucktour denies the charge, repudiates his confessions, and cites two witnesses to prove that he is a man of good character, who in general terms speak to the plea.

The prisoner's confession before the commissioner for the suppression of dacoity is a full and detailed recital, and in all respects corroborated by the evidence of the approvers. The record distinctly sets forth his complicity in the Damoordah and other affairs, and is verified by attestation of two of the practising mooktars of Hooghly.

The approver's evidence in this case is above suspicion. It was recorded long previously to the arrest of the prisoners and with all the precautions necessary to render it credible testimony. I therefore convict both the prisoners of dacoity and having belonged to a gang of dacoits, and recommend that a sentence of transportation for life be issued against them.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence against the prisoners, rejecting any thing which the approvers may have said in their evidence, in excess of what they had stated in their original confessions, stands thus :—

Sheikh Hafizoollah is implicated by Koilas in the Damoordal case, and in another dacoity.

Is implicated by Hubboo in ditto.

Is implicated by Jameer in ditto and in four other dacoities, and he is also named in the confession of Bucktour.

Sheikh Bucktour is implicated by Koilas in the Damoordal case.

Is implicated by Hubboo in ditto.

Is implicated by Jameer in ditto and in another dacoity.

Is implicated by Roopchand in four other dacoities, and he himself made a full and free confession, which is duly attested before the commissioner for the suppression of dacoity.

The occurrence of four of the dacoities, in which Hafizoollah was concerned and of three of those in which Bucktour was engaged, is certified from the records.

Both counts of the charge are established on the evidence, and the Court sentence the prisoners to imprisonment for life in transportation.

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**SHEIKH HA-
FIZOOLLAH
MUSSULMAN**
and another.

PRESENT:

SIR R. BARLOW, BART., }
 AND } *Judges.*
 J. DUNBAR, Esq., }

GOVERNMENT ON THE PROSECUTION OF RAMNARAIN
BUDDEE*versus*

BHOLANATH LUSHKUR.

24-PERGUN-
NAHS.

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BHOLANATH
LUSHKUR.The prisoner
who had carried
on an in-
trigue with the
deceased's wife
was "convictedof wilful mur-
der and sentence-
d capital-
The wife of the
deceased who
was committed
to the sessions
was admitted
to a pardon by
the sessions
judge under
Regulation X.
of 1824, and
her evidence
was taken as a
witness.CRIME CHARGED.—Wilful murder of prosecutor's brother,
Hulodhur Buddee.Committing Officer—Mr. E. A. Samuels, magistrate of the
24-Pergunnahs.Tried before Mr. J. H. Patton, officiating additional ses-
sions judge of 24-Pergunnahs, on the 28th September 1853.*Remarks by the officiating additional sessions judge.*—I have
the honor to forward herewith, to be laid before the Nizam-
ut Adawlut, the proceedings on the above trial, held by me
at the sessions court at Allipore on the 28th of September
1853, together with the record of the original trial, referred
by my letter No. 95,* dated 15th August idem.* From J. H. Patton, Esq., officiating additional sessions judge of
24-Pergunnahs, No. 95, dated 15th August 1853.I have the honor to transmit, to be laid before the Nizamut Adawlut,
Trial No. 6 of the sessions for August 1853.
Case No. 7 of April 1853.
Government on the prosecution of
Ramnaraain Buddee
versus
No. 1, Bholanath Lushkur, aged 29 years,
son of Siso Lushkur.
No. 2, Tripoora Podencee, aged 33 years,
daughter of Ubheeran Lushkur.
1st. Wilful murder of prosecutor's
brother, Hulodhur Buddee.
2nd. Being accomplices in the above
crime.Crime perpetrated on the 16th April
1853.Committed for trial by Mr. E. A. Sa-
muells, magistrate of the 24-Pergunnahs,
on the 30th April 1853.*Fulta* or acquittal.The prisoners are charged with the
wilful murder of Hollodhur Buddee,
the brother of the prosecutor and hus-
band of the female prisoner, Tripoora
Podencee, and plead *not guilty*.
The prosecutor, in substance, states
that an intrigue had been openly carried on between the prisoners for the
space of three years, to the extreme distress and annoyance of the deceased,
who tried all that prayer and entreaty could do to check it, and at last
had recourse to the expedient of calling the male prisoner his *dhurmubap*, in order to induce him to break off the connexion; that this measure
only led to the deceased being beaten by the male prisoner, and eventuated
in a temporary separation between him and his wife; that they came
together again after a while through the interference of friends, and on
the night of the murder retired to rest as man and wife; that about

The prisoner is charged with wilful murder and pleads *not guilty.*

In my letter of reference, above adverted to, instead of proposing the sentence to which I considered the two prisoners respectively obnoxious from the evidence adduced on the trial, I ventured to suggest for the Court's consideration the ex-

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midnight he (the prosecutor) heard the female prisoner wake the deceased and ask him to accompany her, while she went out to relieve the calls of nature, and that being up at the time, he saw them leave the house and take the direction of the fields; that he then went to bed again, and early the following morning heard one of his nephews calling the deceased by the appellation of uncle in a loud voice; that he also heard the female prisoner chide him for thus vociferating, and address him in the words, "Have you an uncle?" and then tell him that his uncle had been enticed out of the house by her during the night and murdered by the prisoner Bholanath, who threatened to kill her also, if she disclosed the matter; that he got up immediately and was told by two of the prisoners, Bholanath's brothers, who then appeared, that his own brother, Hullodhur, was hanging suspended from a tree; that he went and beheld the spectacle and informed the chowkeedar.

The witnesses Nos. 1, 2, 3 and 5 depose to the existence of criminal intercourse between the male and female prisoners, to the excessive annoyance felt thereat and repeated remonstrances made thereto by the deceased, to the temporary separation between the deceased and his wife in consequence, to the rumour of the murder, the discovery of the deceased's body suspended from a tree by the neck, the marks of violence exhibited on the corpse, and the mofussil confession of both the prisoners. The testimony of these four persons on the points set forth is clear, consistent, and, to my mind, convincing. It moreover describes the body as having one foot resting on the ground and the other slightly raised while in the pendent posture—the hands hanging naturally, as evincing no death struggle at the moment of dissolution—the neck broken, and a severe contused wound on the right side of it—all which appearances plainly indicate the fact that the body was suspended after death, and that the deceased did not commit self-destruction. I consider this evidence strongly corroborative of the presumptions raised by the prosecutor's statement.

The body appears to have been in such a state of decomposition when sent in, that the civil surgeon was unable to make any sort of internal examination. His evidence therefore only tends to show that there were external marks of a ligature round the neck, from which fact it was inferred, that strangulation was the cause of death. It is quite as easy, however, to believe, that the appearance above described was produced by the suspension of the deceased for several hours by the neck after death, as by suicidal strangulation during life.

The witnesses Nos. 8 and 9 prove that the prisoner, after confessing crime, produced the bludgeon with which he alleged that he committed the murder. He was sent to his house under charge of two burkundauzes by the darogah's orders, and brought away the weapon which was placed against the back wall of his house.

The remaining witnesses for the prosecution prove the confession of the female prisoner before the magistrate, which tallies in all respects with the admissions she made before the police.

The prisoner Bholanath Lushkur repudiates his mofussil confession before the magistrate and this court, and here cites witnesses to prove that it was extorted by the police under ill-treatment. The purport of that confes-

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pediency of tendering a free pardon to the second prisoner, Tripoora Podence, on condition of her making a full, true and fair disclosure of all the circumstances connected with the murder within her knowledge—such a course being calculated to subserve more completely the ends of retributive justice.

The Court were pleased, under their Resolution* No. 1020,

sion is clear and distinct, as to his having committed the murder with the bludgeon in question, in concert with the female prisoner.

Four persons were examined on behalf of the prisoner, relative to his plea, two of whom are silent on the subject and two affirm that they heard the prisoner crying while in the custody of the police, but did not see him and witnessed no ill-usage: one of the latter deponents is the prisoner's uncle.

The prisoner Tripoora Podenee reiterates the admissions she made both before the police and the magistrate. Her detailed statement before this court is precisely similar to that she made on the two former occasions, and in direct terms implicates the male prisoner as the perpetrator of the murder. She keeps out of view, however, her own complicity in the crime, and in that respect only I believe her statement disingenuous. She tells the story of her having induced the deceased to leave home at night with the view of accompanying her for a certain purpose, but makes it appear that the presence of the male prisoner then and there was accidental. This cannot for a moment be credited, particularly as Bholanath was armed, and his confession distinctly shows that the whole was a pre-concerted plan, he undertaking to kill and Tripoora to lure the victim on to destruction.

These admissions, taken in connection with what the prosecutor saw and heard on the night of the murder, go far to criminate both the prisoners. Had Tripoora been made a witness by the magistrate, the case against the male prisoner would have been still more complete, but there is abundant presumptive evidence of his guilt, and I have no doubt that he committed the murder in the manner set forth by himself and Tripoora in their respective confessions. Tripoora's complicity is undeniably established by her consistent admissions throughout.

The *futwa* of the law officer acquits both the prisoners and declares them entitled to their release.

I dissent from the finding, and convict the prisoner Bholanath Lushkur of wilful murder and the prisoner Tripoora Podenee of being an accomplice in the crime; but instead of proposing to the Court the measure of punishment to which I consider them individually obnoxious, as is usual in cases of such reference, I would beg respectfully to suggest for the ends of retributive justice, that the Court take into consideration the expediency of tendering a free pardon to the prisoner Tripoora Podenee, on condition of her making a full, true and fair disclosure of all the circumstances connected with the murder within her knowledge. This will strengthen the case very materially against the prisoner Bholanath, who has been guilty of a cruel and deliberate murder, and deserves no commiseration. A precedent for the proceeding suggested will be found in *Nizamut Adawlut Reports*, Volume IV., page 255, and the trial could be re-opened for the purposes of a fresh defence from the prisoner, with reference to Tripoora's evidence, a fresh *futwa* and proposed sentence.

* *Resolution of the Nizamut Adawlut. (Present : Sir R. Barlow, Bart., and Mr. J. R. Colvin) No. 1020, dated the 29th August 1853.—The Court, having duly considered the proceedings held on the trial of Bholanath Lushkur and Tripoora Podenee, think that the truth will be more satisfactorily developed in this case, if a pardon be tendered to the second prisoner,*

of the 29th August 1853 to adopt my view of the case, and considering that the truth would be more satisfactorily developed by the measure, directed the pardon to be tendered in the usual form and on the usual terms, so as to render Tripoora a witness on the trial of the other prisoner, Bhola-nath Lushkur.

The trial has accordingly been re-opened and Tripoora examined on solemn declaration. Her evidence tallies in all respects with her confessions before the police and the magistrate. She describes nearly in the same terms her leaving her house in company with her husband to relieve nature on the night of the murder—her noticing a stranger at the place, whom she imagined to have gone there with the same intent as herself—her hearing the sound of a heavy blow behind her while sitting at the water's edge of a tank, where she had for a while left her husband and seen the stranger—her witnessing the repetition of the blow, the prostrate fall of her husband under the stroke of the prisoner's bludgeon and his struggles in the agonies of death. She also mentions that the prisoner dragged her husband a few paces after having felled him to the ground, and on her upbraiding him for what he had done, that he threatened to kill her also, on which she ran home and closed the door. She admits having carried on an intrigue with the prisoner to the great annoyance of her husband, who, to induce him to break off the intercourse, called him on one occasion his "*dhurum-bap*," and states that this circumstance tended in a great measure to dissolve the existing connection, the termination of which was a source of much chagrin to the prisoner and the motive that induced him to murder her husband.

Tripoora Podenee, on the usual terms, so as to render her a witness on the trial of the other prisoner, Bholanath Lushkur. It was quite competent to the sessions judge (see Clause 2, Section V. Regulation X. 1824, and case of Paijary and another, Nizamut Adawlut Reports, 1851, pages 1521 to 1526) to tender this pardon of his own authority, and with the view of the case stated in his letter, it would have been better had he at once done so.

The Court direct the sessions judge to re-open the trial, and then to adopt the above course, and if the prisoner Tripoora accept the offer, to have her evidence, with any additional evidence it may suggest, for the prosecution, recorded, a fresh defence taken from the prisoner No. 1, and any fresh witnesses heard, whom he may desire to summon. A new *futwa* will then be taken from the law officer, and the sessions judge will dispose of the case, as he may think proper, under the Regulations, upon the result of this further investigation.

If the prisoner Tripoora should decline to accept the offer of pardon, with a view to her being examined as a witness, the sessions judge will then re-submit the present record with a statement of the sentence, which he would propose, on the facts which he holds to be established by it in regard to each of the prisoners.

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BHOLANATH
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The prisoner denies the charge and accuses Tripoora with having got up this case against him, in consequence of his having abandoned the intercourse that formerly existed between them, which he was induced to do from the fact of her late husband having on one occasion called him "*dhurum bap*." He calls witnesses to prove that Tripoora vowed vengeance against him for forsaking her.

I examined four persons on behalf of the prisoner, but their evidence avails him nothing. They speak from hearsay, and refer only to the previous existence of the intimacy between Tripoora and the prisoner, and its subsequent discontinuance.

The *futwa* of the law officer acquits the prisoner and declares him entitled to his release.

I dissent from the finding and refer the Court to my former letter of reference, for the grounds on which I consider the prisoner Bholanath Lushkur guilty of the charge brought against him. The direct testimony of the witness Tripoora Podenee, on the present trial, makes the scale of evidence preponderate greatly against him and convicts him conclusively of the crime. Having no doubt of the prisoner's guilt, and considering him to have committed a cruel and barbarous murder, without extenuation or excuse, to render him an object of mercy, recommend that he suffer death.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow and Mr. J. R. Dunbar.)—The prisoner confessed in the mofussil and gave full details of the murder. The confession was not made till the day after his arrest ; but it bears internal evidence of its truthfulness, and three witnesses have attested, and in their depositions give the particulars of it. Subsequently, the prisoner, before two other witnesses, produced the instrument with which he killed the deceased, and at the same time stated before them that he had made use of it on the occasion. Musst. Tripoora Podenee was at first charged as a prisoner. She was under the recommendation of the sessions judge admitted to give evidence by this Court, and the case was returned to the sessions court with the view of obtaining her evidence. When a prisoner, she said she saw the male prisoner dragging away deceased, both in the mofussil and before the magistrate. Her deposition as a witness corresponds in every respect, save as to the repetition of blows, with her statements as an accused. Very shortly after the murder, she cried out to one Bholanath, examined by the police, but not by the magistrate, that he, *prisoner Bholanath*, had killed her husband. This appears in her confessions, and Bholanath above alluded to stated to the same effect before the police. The corpse was in such a state of decomposition, that the medical officer could not very

satisfactorily account for the death. Marks, as of strangulation, were however visible. The prisoner in his confession said he knocked the deceased down with a bamboo and then dragged him to a tree, and there suspended him when breath had not left him. Whether however death was caused by the blows or by the hanging, there can be no doubt that the deceased met an untimely death on the spot, at the hands of the prisoner. In his defence he endeavours to prove that Musst. Tripoora, through enmity, has got up the case against him. The story is not proved, and is most improbable, for she was the cause of the murder. The law officer rejects the evidence of the female witness, which, however, is admitted by the sessions judge, who is of opinion that it conclusively convicts the prisoner of the murder. We concur with the sessions judge in the prisoner's conviction. The circumstances of the case, confirmed as they are by Musst. Tripoora's evidence, are, in our judgment, conclusive against the prisoner. We therefore sentence him, as recommended by the sessions judge, to suffer capitally.

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Case of
BHOLANATH
LUSHKUR.

PRESENT:

A. J. M. MILLS, Esq., Judge.

GOVERNMENT AND LAULUCH ROY
versus

BEHAREE ROY (No. 1), CHOOAH ROY (No. 2,) RAM-SURUN ROY (No. 3,) TUPOSEEEA ROY (No. 4,) AND BUKHTOUR ROY (No. 5.)

CRIME CHARGED.—Assault and severe wounding of Lauluch Roy, the prosecutor, from the effects of which his skull was fractured.

CRIME ESTABLISHED.—Assault and severe wounding of Lauluch Roy, the prosecutor, from the effects of which his skull was fractured.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 17th June 1853.

Remarks by the sessions judge.—This is a case of unpremeditated assault, accompanied with severe and dangerous wounding.

The prisoners, during the festival of the *holee*, approached the prosecutor's *kulean* with their torches, and on the prosecutor's remonstrating with them and urging the danger which the flambeaux entailed upon his sheaves of grain, they attacked him with their sticks and thrashed him severely, one of the blows lighting on his head, fractured the skull.

SHAHABAD.

1853.

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Case of
BEHAREE
ROY and
others.

The prisoners were convicted of assault and severe wounding, amounting to the fracture of the prosecutor's skull. Sentence of five years' imprisonment, upheld in appeal.

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BEHAREE
Roy and
others.

These facts are established by the evidence of eye-witnesses. Prisoners Nos. 1, 2, 4 and 5 pleaded an *alibi*. No. 3 pleads sickness.

The witnesses of No. 2 having denied all knowledge of the prisoner's statement before the magistrate, the prisoner declined to examine them before the court.

Those of the other prisoners confirm their statement to some extent, but their testimony is weak and inconclusive.

I never believe an *alibi* in opposition to direct evidence for the prosecution, when that evidence is good and in conformity with the facts of the case.

The *futwa* pronounces the prisoners guilty and holds them liable to *seasut*.

This was a very savage and cowardly attack on a single, weak and unprotected lad.

I have sentenced the prisoners to five (5) years' imprisonment each with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—Mooshee Ameer Alee, on the part of the prisoners, has contended that the testimony of the eye-witnesses is not credit-worthy, and the *alibis* pleaded by the prisoners are satisfactorily established. I see no reason to discredit the evidence for the prosecution, it is direct and consistent throughout every stage of the proceedings. The *alibis* I reject, they are not supported by the evidence in a manner to warrant belief in them, in opposition to the direct evidence for the prosecution. I reject the appeal.

PRESENT :
J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND RAMANUND MUNDUL

versus

SOONDUR BAGDEE (No. 2,) RADHANATH GHOSE (No. 3,) NUJEEM SHEIKH (No. 4,) KHETERNATH DEY (No. 5,) RAMTUNOO SURMOKER DAGEE (No. 6,) HAFIZOODEEN SHEIKH (No. 7,) SHEIKH ASEER (No. 8,) TALEB SHEIKH (No. 9,) MUHUTSUB GHOSE (No. 10,) RAMCHUNDER DEY DAGEE (No. 11,) RAMLAL PAL (No. 12,) CHOTTA DEENOO DASS KYBURT DAGEE (No. 13,) MOOLOOK GHOSE (No. 14,) DOMUN DEY (No. 15,) SREERAM GHOSE (No. 16,) BURRA DEENOO DASS KYBURT DAGEE (No. 17,) TEENCOWREE MUNDUL (No. 18,) AND BUNGSEE GWALA (No. 19.)

CRIME CHARGED.—1st count, dacoity with wounding, committed in the house of Ramanund Mundul, prosecutor, from whence property valued at rupees 1,044-11-5 was plundered, and 2nd count, knowingly receiving property acquired by committing the above-mentioned dacoity. Prisoners Nos. 2 to 18 are charged in the 1st and 2nd counts, and prisoner No. 19 in the 1st count.

CRIME ESTABLISHED.—Prisoners convicted of the crime charged.

Committing Officer—Mr. R. Abercrombie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 9th September 1853.

Remarks by the sessions judge.—The prosecutor's house was attacked by a gang of, it is said, 25 or 30 dacoits, on the night of the 31st July last, and plundered of property to the alleged value of rupees 1,044-11-5: two of the prosecutor's servants were also wounded and beaten, but not severely.

As the dacoits decamped, Nundiram Mal and Bakir Mulkick, witnesses Nos. 11 and 12, servants of the prosecutor, and Khaternath Chowkeedar, witness No. 13, followed them, and at about a *coss* distant from the scene of the dacoity witnessed the division of the plunder, during a short halt made by the dacoits near a tank. On their resuming their retreat, Nundiram Mal continued to follow as close on their heels as he safely could, whilst his companions went to every village on or near the route to rouse up the villagers and collect the chowkeedars, who, one and all, bravely responded to the call. After proceeding in this way for about 4 *coss*, the morning dawned, and as the pursuers found they were sufficiently strong to cope with

BEERBHOOM.

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Case of
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BAGDEE and
others.

Eighteen prisoners were convicted of dacoity with wounding and sentenced by the sessions judge to different terms of imprisonment. Appeal rejected, and praiseworthy conduct of the chowkeedar who gave chase to, and eventually captured, the dacoits noticed.

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November 19.

Case of
SOONDUR
BAGDAR and
others.

the gang, for the *dunkas* had sounded far and near, and the whole country was on the alert, Nundiram Mal most gallantly headed the dacoits, when finding themselves nearly surrounded, they began to disperse, and take to flight in every direction, and so fell an easy prey to the chowkeedars and others, who did their duty right well, and have been most deservedly rewarded by the superintendent of police, who has directed the officiating magistrate to distribute the sum of 400 rupees amongst those who distinguished themselves in the apprehension of the gang.

So satisfactory a capture, and such praiseworthy conduct on the part of the villagers and chowkeedars, have seldom come to my notice ; it only shews what these people can, and will do, when dacoits omit the precaution of securing their good-will and co-operation ; and yet the feeling of satisfaction is not without alloy. The prosecutor swears to the loss of property to the value of more than 1,000 rupees, and yet, although 18 dacoits, which I am persuaded composed the entire gang, for I do not believe one escaped, were apprehended with all the property they managed to carry off from his house, only articles to the value of rupees 111-15-9. have been recovered. It is said that those who succeeded in making their escape must have had the remainder, but this is nonsense, for even if any did escape, which I do not believe, it is not likely that the few who are not forthcoming should have had nine-tenths and the great body of the gang only one-tenth of the booty. The question naturally arises, has the prosecutor grossly exaggerated his loss, or have the parties concerned in the apprehension and detention of the gang been as guilty of robbery as the dacoits themselves ; either one or other of these must be the case, there is no alternative, for concealment of any thing by the dacoits themselves was under the circumstances simply impossible.

Four of the prisoners confessed before the darogah to having committed the dacoity in company with the other prisoners. Three of these acknowledged before the magistrate that they had made such statements in the mofussil under coercion, otherwise they all denied the charge.

In this court they each pleaded *not guilty*, and stated that they had left their houses on different errands, and were in pursuance thereof when they were apprehended by the witnesses for the prosecution. Prisoner No. 2, a resident of Gungatikooree, thannah Keogong, said he had been to Sooree with a bundle belonging to some brahmin, and was seized on his way home : he called no witnesses. Prisoner No. 3, a resident of zillah Nuddea, said that he was on his way to buy bufialoes, when he was taken into custody : his witnesses

deposed that he told them that that was his object in leaving home. Prisoner No. 4, also a resident of zillah Nuddea, said that he was on his way to Sooree, to see a relative who was in jail, when he was laid hold of : the witness called by him could say nothing whatever in his favor. Prisoner No. 5, a resident of zillah Burdwan, pleaded that he had left home to buy gram, and his witnesses deposed that he gave out that such was his purpose. Prisoner No. 6, also of Burdwan, has only been 14 months out of jail, after having suffered imprisonment for 10 years for dacoity : he said he had gone to Boidonath at Deoghur, and his witnesses stated that on leaving home he told them he was going there. Prisoners Nos. 7, 8 and 9 live within the jurisdiction of thannah Bhurutpore, in this district ; they said they were on their way to purchase cattle, but their witnesses knew nothing of their affairs. Prisoner No. 10 lives in zillah Nuddea and had come to look after a run-away mistress : his witness had nothing to say in his favor. Prisoner No. 11 had been convicted on three different occasions, and on the last was sentenced to three years' imprisonment : he asserted that he left his home in zillah Nuddea in quest of his relative, prisoner No. 12, who had quitted the village in anger. Prisoner No. 12 confirmed the story, and their witnesses deposed, that they heard that such was the case. Prisoner No. 13, a resident of zillah Nuddea, has been convicted of cattle-stealing : he had nothing to say in his defence, but that the cloth found on his person is his own property : his witnesses were unable to identify it. Prisoner No. 14 said he was sick, and left home for the purpose of going to Boidonath : his witnesses had heard that such was his intention. Prisoner No. 15, from Nuddea, merely offered to prove his respectability : his witnesses stated that he did not bear a bad character. Prisoner No. 16, also from Nuddea, left home in a fit of anger caused by a dispute with his brother, the two witnesses named by him were not found. Prisoner No. 17, an inhabitant of Coguree, in thannah Bhurutpore, in this district, has been in jail in default of security for character : he said he was on his way to Sooree to settle a debt with a muhajan, when he was seized : his witnesses stated that they had heard that such was his intention. Prisoner No. 18 resides at Kandely, thannah Keogong, in this district, he left home with rupees 25, for the purpose of buying cattle when he was apprehended : his witnesses heard that he had gone on that errand. Prisoner No. 19 comes from Nuddea, he pleaded that the witnesses for the prosecution had given false evidence and that he was himself a respectable man, his witnesses deposed that they had heard nothing against his character.

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The proof against the prisoners is conclusive. I have not the shadow of doubt in regard to the guilt of any of them. I therefore convict them all of the crime charged, and sentence prisoner No 6, who has been previously convicted of dacoity, to fourteen (14) years' imprisonment and two (2) years' extra in lieu of corporal punishment, altogether sixteen (16) years ; prisoners Nos. 11, 13 and 17, also Dagees to twelve (12) years' imprisonment, and prisoners Nos. 2, 3, 4, 5, 7, 8, 9, 10, 12, 14, 15, 16, 18 and 19 to ten (10) years' imprisonment each, ~~and~~ with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The dacoits were kept in view by the gallant Nundaram and his companions, during the whole course of their flight.

The entire truth of their statements on this point is borne out by the confessions of some of those who were taken, and by the recovery of part of the plundered property, from those who had been so perseveringly followed up during the night.

The praise and the rewards awarded to those engaged in the capture in this case were certainly well deserved. The sentence is confirmed.

PRESENT :
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND CHEENEELAS PAL
versus

JADOO MOOCHEE (No. 4,) FURING KOORAR (No. 5,) NEELCOMUL GHOSE (No. 6,) RAMLALL BHOOAN (No. 7,) AND MORAD SHEIKH (No. 8.)

CRIME CHARGED.—Prisoners Nos. 4, 5, 6, 1st count, burglary in the house of Cheeneelas Pal, in which property to the value of rupees 22-4 was stolen ; 2nd count, receiving and possessing stolen property, knowing the same to have been acquired by the said burglary, and 3rd count, prisoner No. 4, privity to the fact. Prisoner No. 7, accessory to the said burglary after the fact. Prisoner No. 8, 1st count, burglary in the house of Cheeneelas Pal, in which property to the value of rupees 22-4 was stolen, and 2nd count, accessory after the fact.

CRIME ESTABLISHED.—Prisoners Nos. 4, 5, 6 and 8, burglary and theft, and prisoner No. 7, accessory to the above crime after the fact.

Committing Officer,—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 13th August 1853.

MOORSHEADABAD.

B.A.D.

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November 19.

Case of

JADOO MOO-
CHEE and
others.

The conviction of the prisoners for burglary and theft was ~~up~~ held in appeal.

CRIME ESTABLISHED.—Prisoners Nos. 4, 5, 6 and 8, burglary and theft, and prisoner No. 7, accessory to the above crime after the fact.

Remarks by the sessions judge.—On the night of the 30th June 1853, the house of the prosecutor was burglariously entered into, and property stolen from it to the value of rupees 22-4. The prosecutor reported the occurrence and furnished a list of the stolen property to the darogah the next morning.

The prisoners towards morning were in the act of dividing the booty, consisting of a brass *ghurra*, &c., in the prisoner Jadoo Moochee's house, when Bheekoo Chowkeedar and others came suddenly upon them and arrested Furing Koorar and Neelcomul Ghose with the property, Jadoo and other defendants making their escape. The day after the 2nd July, the prisoner Jadoo was apprehended. He confessed and stated that Furing Koorar, Morad Sheikh, Comul Ghose, and Jumna Koorar (not yet arrested) took him along with them to commit a robbery in Koomarpura, a *mehala*, in the village of Chowab, but that he remained at a distance from the scene of action, while the others went and stole the property, which was brought to his house and given to Rainlall Bhooan to be weighed. The prisoners Morad and Rainlall were accordingly arrested.

The prisoner Jadoo Moochee stated in his defence before the sessions court, that Comul Ghose, Furing, Morad and Jumna induced him to accompany them for the purpose of stealing, and that the stolen property was brought and kept in his house; and that on the arrival of the Atpohoria of the village, he ran away. The witnesses to the prisoner Jadoo Moochee's confessions, both at the thannah and before the magistrate, proved that they were voluntary.

The prisoners Furing and Comul Ghose entirely deny the charge, and state that they were unjustly arrested. They were implicated by the prisoner Jadoo in his confession as having gone to commit the theft, and arrested in his house. The witnesses Bheekoo Chowkeedar, Khepoo Atpohoria, and Puran Chowkeedar deposed to having arrested the prisoners Furing and Comul Ghose, (the name of the latter is written in the calendar as Neelcomul,) in the house of Jadoo Moochee, with the stolen property, when the prisoners Jadoo Moochee and Rainlall made their escape.

The prisoner Morad Sheikh denied the charge. He was implicated by Jadoo Moochee in his confession. He has mentioned in his defence before the sessions judge, that when he saw the other prisoners carrying stolen property to the house of the prisoner Jadoo, he called upon Purran Chowkeedar, Khepoo and Bheekoo, and told them what he had seen, and consequently two men were arrested at the time. But this statement of the prisoner has been entirely denied by Purran Chowkeedar, Khepoo and Bheekoo.

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others.

The witness Bama, wife of the prisoner Jadoo, stated in her evidence, that with the exception of her husband and Ramlall, the other prisoners brought the property to her house and that her husband was in company with him.

The prisoner Ramlall denied the charge and stated in his defence, that the chowkeedar arrested him out of enmity, but from the confession of Jadoo and the evidence of witnesses, it was proved that he had been to the house of Jadoo for the purpose of weighing the property, and that he fled away after seeing the witnesses to the apprehension.

The prisoner Morad was, on a previous occasion, in a case of dacoity, imprisoned for seven years, and Neelcomul in another dacoity for three years, in the district of Rajshahye.

The law officer, who sat on the trial, convicted the prisoners Jadoo, Furing, Neelcomul and Morad Sheikh, of having burglariously stolen property from the house of the prosecutor, and the prisoner Ramlall, as an accessory after the fact, upon violent presumption, in which finding the sessions judge concurred and sentenced the prisoners as stated in the proper column.

Sentence passed by the lower court.—Prisoners Nos. 4 and 5, five (5) years' imprisonment, with labor and irons : prisoners No. 6 and 8, eight (8) years' imprisonment with labor and irons in banishment ; prisoner No. 7, four (4) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow Bart.)—The prisoner Jadoo Moochee (No. 17,) confessed in the mofussil before the magistrate and to the sessions judge, to being an accomplice in the burglary : he also stated that prisoners Nos. 18, 19 and 21 came to his house and deposited the property with him, adding that Nos. 18 and 19 were seized there, whilst himself and No. 20 effected their escape. No circumstances of aggravation attended the burglary and a small amount of property only was carried off. I sentence the prisoner as an accomplice to four (4) years' imprisonment with irons and labor.

The prisoners Nos. 18 and 19 deny the charge ; they were, however, seized in the house of prisoner No. 17, in the act of dividing the property. They are both clearly guilty of receipt of stolen property, knowing it to be such. I sentence No. 18 to four (4) years' imprisonment, with irons and labor. The enhanced sentence passed upon No. 19 is upheld, with reference to his previous conviction of dacoity, as acknowledged in his answer.

Prisoner No. 20 was not seized in the house of No. 17 ; he ran off upon the approach of the chowkeedars, but was recognized by them on the spot, where the other prisoners were dividing the stolen property, and is stated to have been

the individual who was weighing the brass utensils for them. I concur with the sessions judge in his conviction and in the sentence passed on him.

Prisoner 21, in his foulardy answer, stated he was told by one Lall Duggee, that prisoner No. 18 was a thief, and upon being asked, promised to have him apprehended. Early on the night of the burglary, prisoner saw certain parties leave the house of prisoner No. 17, in the direction of Chooan village, where the prosecutor lives; he watched, and early in the morning he saw them return with some bundles, of which he gave information to the chowkeedar whom he accompanied to prisoner No. 17's house and there saw them weighing the brass utensils, and had prisoners Nos. 18 and 19 seized.

The chowkeedars deny all this. He names those who seized him as his witnesses, who however say nothing in his favor as well as three other witnesses, who do not even recognize him. The prisoner was convicted of dacoity and underwent seven (7) years' imprisonment on a former occasion.

The prisoner's answer in the sessions court varies from his defence before the magistrate. He omits all mention of the first part of his statement to the magistrate, allowing he saw the thieves return with their load and assisted in their apprehension. There is a strong presumption of his participation in the burglary, independent of his implication by prisoner No. 17: his established bad character justly subjects him to the enhanced punishment passed by the sessions judge, which I confirm.

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November 19.

Case of
JADOO MOO-
CHEE and
others.

PRESENT:

SIR R. BARLOW, BART.,
 J. DUNBAR, Esq.,
 AND
 H. T. RAIKES, Esq.,

} Judges.

GOVERNMENT

versus

CHOBEELAL MUSOONDER (No. 1,) KANGALEE BEARER (No. 2,) JINNUT BEARER (No. 3,) MEEAJAN BEARER (No. 4,) KINNOO BEARER (No. 5,) MOOCHEE SIRDAR (No. 6,) AND MOHESCHUNDER SEIN (No. 8.)

RAJSHAHYE. CRIME CHARGED.—1st count, procuring the forgery of a document, called a *kubala-jawab*, and filing the same, knowing it to be forged, in the court of the moonsiff of Beauleah, and 2nd count, aiding and abetting in the above.

1853.

November 23.
 Case of
CHOBEELAL
MUSOONDER
 and others.

The prisoners were charged with the forgery of a *kubala-jawab*, and were convicted by the sessions judge of aiding and abetting and trying to give effect to the forged *kubala-jawab* (or *ikbal-davee*.)

CRIME ESTABLISHED.—Aiding and abetting and trying to give effect to a forged *kubala-jawab* (or *ikbal-davee*.)

Committing Officer—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 23rd August 1853.

Remarks by the sessions judge.—This trial was held with the assistance of a jury of three vakeels of the judge's court, who, I considered, would be better able to assist me to get at the facts of the case than the law officer.

A suit was filed by one Sunta Monee Debea, in the moonsiff's court at Beauleah, against six individuals, by name Moochee Sirdar, Roop Sirdar, Kedmut Sirdar, Amarut Sirdar, Buktar Sirdar and Kinnu Sirdar, to recover rupees 200, with interest, alleged to be due under a bond given to her husband.

On the 27th May 1853, the plaint was filed. *

On the 28th, the notice was made over to the nazir.

On the 30th, the nazir made his return, and gave an acknowledgment from all the defendants sued.

On the 1st June, the *kubala-jawab* was filed, and at the time the prisoners Nos. 7 and 8, on being asked, certified to knowing the prisoners Nos. 1 to 6, and that they were the persons sued and whose names were subscribed to the *kubala-jawab*.

It however was soon discovered, they were not what they represented themselves to be, and No. 1, who called himself Roop Sirdar, turned out to be a Hindu. The moonsiff first sent the prisoners and record to me as judge, but I referred him to the magistrate, under Act I. of 1848, and by that officer they were committed to the sessions.

The Government vakeel having given in the *kubala-jawab*, the prisoners Nos. 1 to 6 pleaded *not guilty* to the several counts of the indictment against them.

Nos. 7 and 8 also pleaded *not guilty*, and denied attesting the *kubala-jawab*, or certifying they knew the other prisoners.

After the evidence for the prosecution had been taken, the prisoners Nos. 1 to 6 were called on for their defence, and stated they were taken to the cutchery by one Kalee Chunder Lahooree, who filed the *jawab* or answer. All were then asked their places of residence, when Nos. 1, 5 and 6 stated they lived at Furreedpore, in zillah Moorshedabad, and Nos. 2, 3 and 4 that they came from Nuddea. One witness (No. 12) was examined, but could prove nothing, and the others the prisoners declined examining.

No. 7 pleaded merely that he could not write. One witness (No. 16) deposed he knew the prisoner was a mookhtar, but could not say whether he was able to write.

No. 8 pleaded that Kaleo Chunder Lahooree and Godhun Sirdar took him to the moonsiff's cutchery, when he was arrested. He denied attesting the *kubala-jawab* or certifying that he knew the defendants therein indicated. His witnesses proved nothing.

The jury were then charged and told to consider their verdict. That being vakeels, they must be fully cognizant of the practice of the courts, and they need not be informed that filing a forged *ikbal-davee* was a fraud, and attesting the same, in the presence of the presiding judge, as given by persons they knew (whether they knew them or not,) was likewise a fraud. That this was the offence imputed to the last two prisoners, and if the witnesses were to be believed, No. 8 wrote his own name, and that of No. 7,* who pleaded he could not write, although a mookhtar, and his statement had in a manner been supported by one witness.

The jury then retired, and when they returned to the court, gave in a verdict, to the effect that it was not proved, that Nos. 1 to 6 filed the *kubala-jawab*, that it was not proved No. 7 attested it, but it was proved that No. 8 had done so.

The verdict being tantamount to one of acquittal, as regards all the prisoners but No. 8, the jury were asked, if they considered the *kubala-jawab* a forgery, and replied in the affirmative.

With reference to the evidence produced, I could not concur in the acquittal of the first six prisoners, for though it was quite possible they did not themselves file the *jawab* in the

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moonsiff's court, all six were then and there present, personating the individuals named in the *jawab* under assumed names (except No. 5,) and stating they were parties to the suit, and confessing judgment, and of this there could be no manner of doubt. I therefore convicted them of aiding and abetting, and trying to give effect to a forged *kubala-jawab*, and sentenced them to two (2) years' imprisonment, and to pay a fine of rupees 50 or to labor; No. 8, for fraudulently attesting a forged *kubala-jawab*, I sentenced to four (4) years' simple imprisonment; No. 7, agreeably to the verdict, was ordered to be released. No sooner was sentence passed than an uproar commenced, and apprehending a catastrophe similar to what had happened in the moonsiff's court, I was preparing to leave the cutcherry, when the prisoners 1, 2, 3, 4 and 6 began crying out that No. 5 had promised them money to accompany him to the moonsiff's cutcherry and personate others, which they had done, and prayed that they might have justice. This quite satisfied me that I was not *wrong* in superseding the verdict as regards these prisoners, evidently ready tools in the hand of others, and the example made will have a good effect. The civil suit I have recalled from the moonsiff's court and shall now try and find out who the plaintiff is. The whole case at present is involved in mystery.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Messrs. J. Dunbar and H. T. Raikes.) —*Sir R. Barlow.*—It is, I think, established that the prisoners Nos. 1 to 5 went before the moonsiff sunder ameen, under the names they, on that occasion, severally assumed, in order to acknowledge judgment in a case alleged to have been brought by Santu Monee Debea against Moochee Sirdar (No. 6) and others, whom the prisoners were instructed, as they say, by the prisoner No. 8, and Gorachand Ghose, (released,) and one Kalce Chunder Lahooree, (absconded.) The prisoner No. 6, Moochee Sirdar, had been sued in the foudaree court by Godhun, a witness, and prisoners Nos. 1 to 5 were Moochee's witnesses. There is great reason to suppose that the released prisoner and Kalee Chunder Lahooree availed themselves of Moochee's witnesses to procure the acknowledgment of the claim preferred in the civil court before the moonsiff sunder ameen against the parties whose names the prisoners assumed, as they aver, at the request of Kalee Lahooree and the two mookhtars Nos. 7 and 8.

The prisoners Nos. 1 to 5 are all ignorant men, and were put forward at the moment tutored by others to gain their ends. They have been guilty of fraud no doubt. No. 6 in aiding and abetting, and the remaining prisoner in the false personation of others and assuming false names. More than this, I do not

think, is proved against them and a sentence of six (6) months' imprisonment, without irons, will suffice in their case.

Prisoner No. 8 is a man who reads and writes ; he it was who, before the moonsiff, put his own name and that of Gorachand at the foot of the answer to the acknowledgment of judgment in the civil action, in recognition of the parties alleged to be defendants in that suit. He did this, he says, as he knew No. 6, and at his request said he knew the others. This was a clear fraud, perpetrated to the detriment of some persons with whom he was not acquainted, and for which he must be held responsible.

I sentence him to two (2) years, without irons, and in default of payment of rupees 50 in fifteen days, to labor.

Mr. J. Dunbar.—I was at first doubtful whether the convictions were good with reference to the specific charges, on which the prisoners have been arraigned. I am of opinion, however, on further consideration, that they may stand, for although prisoners Nos. 1 to 6 may have had nothing to do with the procuring the forgery, there can be no doubt that the filing of the document through Moochhee Sirdar was a joint act, as admitted in their examination before the magistrate. There can be no doubt either that the document was a forged one. None of the prisoners attempt to make out, that they only represented others who had really signed an acknowledgment, and the real Roop Sirdar before the moonsiff deposed that the claim was utterly false. So in regard to prisoner No. 8, in fraudulently attesting a forged confession of judgment, he was assured by aiding and abetting in the attempt to pass the document as good.

The whole affair would appear to have originated with Kalee Chunder Lahooree (who has absconded) and prisoner No. 6, Moochhee Sirdar, and viewing it as a most rascally conspiracy to do a most grievous wrong to the poor men, who were to be made liable for the debt claimed, I do not think the punishment awarded by the sessions judge excessive. I would accordingly confirm the sentence.

Mr. H. T. Raikes.—In consequence of a difference of opinion between Sir R. Barlow and Mr. Dunbar, regarding the crime proved and the sentence to be awarded, this case has been referred to a third judge.

Sir R. Barlow considers nothing more than false personation has been proved against the prisoners, Nos. 1 to 5, and proposes a sentence of six (6) months' imprisonment, without irons, as sufficient in their case, and convicts No. 8 of fraud, sentencing him to two (2) years' imprisonment, without irons, and labor redeemable by a fine of rupees 50.

Mr. Dunbar considers the prisoners Nos. 1 to 6 guilty of filing a forged document, and No. 8 as aiding and abetting the

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attempt to pass the document as good, and would confirm the sentence passed by the sessions judge on all the prisoners.

After attentively considering the evidence, I agree with Sir R. Barlow that nothing more than false personation is proved against the prisoners Nos. 1, 2, 3, 4 and 5. The presumption from the evidence on record is, that the written confession of judgment had been prepared before and with the names of the consenting defendants attached to it, and that the prisoners Nos. 1 to 5 only came forward to personate five of the individuals named. The document was never filed, as it was rejected when tendered for want of attestation. Moochee Sirdar, the prisoner No. 6, appeared for himself with the other prisoners, who were well known to him having been his witnesses in another case. He was doubtless aiding and abetting their false personation, but with what intent, as he was himself thereby confessing judgment in the suit, is not clear. I would sentence the prisoners Nos. 1 to 6, as recommended by Sir R. Barlow.

The prisoner No. 8 is a mookhtar and attempted to give effect to the ostensible acts of the others, by certifying them to be the real parties confessing judgment in the suit. There is every reason to believe he readily lent his aid to what he must have known was a falsehood, namely, his assumed knowledge of five of the parties tendering the document. Convicting him, therefore, of fraud, and seeing no excuse for his acts, I think the sentence of two (2) years' imprisonment, with labor, redeemable by fine of rupees 50, proposed by Sir R. Barlow, should be passed upon him.

PRESENT :

A. J. M. MILLS, Esq., *Judge.*

GOVERNMENT

versus

ASGUR ALEE.

CRIME CHARGED.—1st count, rape on the person of Tota Bebee, aged 10 years.

CRIME ESTABLISHED.—Rape on the person of Tota Bebee.
Committing Officer—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, sessions judge of Chittagong, on the 7th September 1853.

Remarks by the sessions judge.—The prisoner is accused of committing a rape on the person of Tota Bebee. The crime was committed close to the house of the child's father, who brought her at once to the court of the magistrate, who, as blood was still flowing from her person, sent her to the hospital, and ordered the town darogah to secure the prisoner and investigate the case. The evidence of the mother, father and the elder sister of the child proves that she is only 10 years of age, and that the crime was attended by much force and injury. The crime is fully proved against the prisoner, both by the evidence of witnesses and by his own confessions to the police and to the magistrate, and by his admission in this court. At his trial he admits the act, but he alleges the child was a consenting party. He has adduced no evidence to prove consent, and even if it were proved, the consent of a child of so tender an age could not extenuate his guilt. The law officer convicts the prisoner of the crime.

I concur in the finding of the law officer, and sentence the prisoner to imprisonment, with labor in irons, for the period of seven (7) years.

The prisoner urged that he had married the child. Some evidence showed that a marriage was contracted on the morning of the trial, and that property to the value of rupees 50 were placed in the hands of a third party. The evidence however is inconclusive, and the object of the transaction or negotiation was to compromise the case.

The attention of the magistrate was directed to the extreme laxity of the conduct of the parties in whose custody the prisoner was, in permitting him to negotiate a marriage whilst in jail.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and iron s.

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Case of

ASGUR ALI.

Prisoner convicted of rape, sentenced to seven years' imprisonment.

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ASGUR ALEE.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The sessions judge should not have disposed of the case, but referred it under Clause 3, Section VI. Regulation XVII. of 1817. He was accordingly directed in the English Department to adopt this course, but as the prisoner has appealed, it is unnecessary to await the receipt of the reference. The prisoner's plea, that the child consented to the sexual intercourse, is opposed to his confession and the probabilities of the case. He also urges that he had married the child. The marriage was contracted after the commission of the offence and is therefore no extenuation of his guilt. I reject the appeal and sentence the prisoner to be imprisoned, with labor and irons, for the period of seven (7) years.

PRESENT :

J. DUNBAR, Esq., Judge.

MUSST. BEMOLA*versus*

ROWSHUN KHAN.

MIDNAPORE.

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**ROWSHUN
KHAN.**

Prisoner convicted of culpable homicide and sentenced by the sessions judge to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, culpable homicide, in having struck Anund Dass, the husband of the prosecutrix, so severely, that he died therefrom, and 2nd count, aiding and abetting in the above crime.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Moulee Golam Sufdar, law officer exercising powers of a magistrate at Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 12th July 1853.

Remarks by the sessions judge.—This trial is supplementary to that held on the 29th and 30th of April last. This prisoner pleads *not guilty*. The prosecutrix deposes, that on the night of the 10th February, she was informed by a neighbour, the witness Adoree, that her husband was lying insensible on the banks of a tank, a short distance from the house. She went to the spot, accompanied by her sister-in-law, and found her husband in the state described : they carried him home, and after giving him some water, he recovered his senses. He then stated, that he (on the plea of his attempting to assist another *ryot* to escape) had been seized by the prisoner Rowshun Khan, and other peadahs, servants of the talookdar, Oodub Lall Khan, under whose instructions they acted, who carried him away to the house of Durponarain Gutail, assaulted him with sticks and shoes, burnt him with fire, and then threw him down on the spot where he was discovered. This statement, the deceased, Anund

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Dass, repeated to the thannah mohurir, who recorded his dying deposition, on the afternoon of the 12th of February, a short time before he expired from the effects of the beating he had received. According to the inquest held in the mofussil, the bone of the right arm was fractured, and there were several marks and bruises on different parts of the body, as if inflicted by sticks and shoes : the skin on the right side bore the appearance of having been scorched with fire. The deposition of the sub-assistant surgeon corroborates in most points the inquest; he deposes that the immediate cause of death was extravasation of blood upon the brain, that this might have been, and probably was, the result of ill-usage the deceased had evidently received, of which his body bore the marks, though there were no external injuries on the head, corresponding with the seat of injury on the brain. The witnesses for the prosecution depose that the deceased was brought to the house of Durponarain Gutail, where the talookdar was then lodging; on the evening of 10th February ; that he was there severely beaten and burnt by the parties, in whose custody he was, amongst whom were the prisoners Rowshun Khan and others, who afterwards took him away, and they, the witnesses, never saw him again alive. It appears that Oodub Lall Khan had gone to the village of Burda to the house of Durponarain some days previously, with a view to settle accounts with the ryots in the neighbourhood. He was accompanied by a body of nukdees, who had arrested some recusant Assamees. and two of them, the witnesses Mudhoo Gutail (No. 6) and Kisto Mytee (No. 10) had been confined on the morning of the 10th of February, in a silk-worm house, the door of which looked on the spot where the assault on deceased was made. They therefore had a full view of all that occurred, and were able, with the aid of a large fire that was burning on the spot at the time, the weather being cold, to identify four of the persons who assaulted the deceased, the two prisoners amongst them. The testimony of these two witnesses is fully corroborated by that of other eye-witnesses, who had come to the talookdar at Durponarain's house to adjust their accounts. This evidence, together with that given by the deceased *in articulo mortis*, when there is every reason to suppose he would not exaggerate or distort what had occurred, leaves no doubt on my mind that he is the victim of a brutal assault made on him by the prisoner Rowshun Khan and others. It is not clear who inflicted the blows that caused death, but it is abundantly proved that the prisoner was an accomplice in the assault, whatever weapons they might have used in inflicting it. It was, I conceive, not the prisoner's intention to

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deprive the deceased of life, but to punish him severely for attempting to instigate the parties above alluded to, as confined the silk-worm house, to make their escape. The prisoner also acted under the immediate instructions, if not the actual presence, of his employer, the talookdar, who, as is usual in similar cases, has evaded responsibility, by throwing it on his creatures with the aid and connivance of the police. The conduct of the phareedar, whose chowkee was within half a mile of the spot where the assault occurred, and who never made any report to the thannah, is most reprehensible, and the fact of the assault having occurred would never have been known at all, had it not terminated fatally. The phareedar has very properly been dismissed from his office by the magistrate. The prisoner in his defence sets up an *alibi*, which he fails to substantiate. The assessors declare the prisoner guilty of homicide in aiding and abetting in an assault on the deceased Anund, from the effects of which he died. In this verdict, I concur, and deeming the prisoner guilty of culpable homicide, sentence him as indicated in the statement.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence leaves no room to doubt that the prisoner took an active part in the brutal treatment, which caused the death of the deceased. The sentence is confirmed.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND BHUJJUN MULLICK
versus

BHOOTNATH COWRAH (No. 1,) AND BRIJONATH
COWRAH (No. 2.)

CRIME CHARGED.—1st count, dacoity and plunder of property, value rupees 102-10, belonging to the prosecutor, and 2nd count, having in their possession part of the plundered property, knowing it to have been acquired by dacoity.

CRIME ESTABLISHED.—Dacoity and having in their possession plundered property, knowing it to have been acquired by dacoity.

Committing Officer—Mr. E. Jenkins, magistrate of Howrah.
Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 15th July 1853.

Remarks by the officiating additional sessions judge.—The prisoner Bhootnath Cowrah, was arrested on the spot together with a bundle, which proved to be part of the plundered property. He was trying with another to escape by the back-way of a house, and was hit across the shoulder with a blunt sword by the witness Sonaula, and secured with the property. His comrade appears to have turned and made a thrust with a long bamboo spear at Sonaula, but that individual parried the blow and broke the spear shaft with a cut of his sword. Two other persons were present while these events were going on and assisted in the apprehension of the prisoner. Before the darogah, the prisoner Bhootnath confessed the crime and among others implicated the prisoner Brijonath Cowrah, who was arrested accordingly, and in his house were found a brass *thalee* or plate and a printed *sari*, which the prosecutor identified as his stolen property. The latter is quite a remarkable article and easily recognized. He confessed also before the darogah, and his confession accords with that of the prisoner Bhootnath, as to the main features of the dacoity. Both prisoners repeat their confession before the magistrate. The defence set up by the prisoner Bhootnath Cowrah is that the witness Sonaula took him away from his house, on pretence of requiring his services at a nautch, disguised as a dancing girl, threw down something heavy, which had a jingling sound as it fell, bound and beat him, and desired him to confess and name associates. He disclaims all knowledge of the property found on him and calls witnesses to prove that he has followed the trade of dancing all his life. The prisoner Brijonath Cowrah makes no defence,

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COWRAH and
another.

The prisoners were convicted of dacoity and sentenced to fourteen years' imprisonment in banishment.
Appeal rejected.

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COWRAH and
another.

except advancing a claim to the *thalee* found in his house, in proof of which he cites witnesses. Three witnesses were examined for the defence, and professed their profound ignorance of the pleas set up. This is again a good and judicious commitment and reflects credit on the magistrate.

Sentence passed by the lower court.—Imprisonment with hard labor and irons for fourteen (14) years each, in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—It is really difficult to understand how these men could entertain the remotest hope that appeal would be of any use in such a case as this. The evidence is as strong as it could well be. The sentence is confirmed.

PRESENT :
 J. DUNBAR, Esq.,
 AND
 A. J. M. MILLS, Esq., } Judges.

GOVERNMENT AND POORUN CHUNDER *alias* RAJARAM KHETRE

versus

FUKEERA GOWALA* (No. 4,) DOORGAG CHURN MAHOTA* (No. 5,) AND JEEARAM TICCADAR (No. 6.)

CRIME CHARGED.—1st count, wilful murder of Mohun Deye, sister of Poorun Chunder *alias* Rajaram Khetre, plaintiff, and 2nd count, severely wounding of Bhugmunia Burhin, Soharay Mahooree, Balkishen Kahar, and Poornae Mahooree.

Committing Officer—Mr. R. Abercrombie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 13th August 1853.

Remarks by the sessions judge.—The following is a narrative of this extraordinary case :—

It appears that the prosecutor Poorun Chunder *alias* Rajaram Khetre, brother of the deceased Mohun Deye, a fine intelligent lad of 14 years of age, accompanied by his mother, sister-in-law, sister (the deceased,) a female servant (witness No. 1,) and a male servant, Fuкеera Gowala, (prisoner No. 4,) left Benares at the latter end of Kartick last, on a pilgrimage to Juggernaut. On the banks of the Damodar they fell in with Poornae Mahooree (witness No. 4,) attended by his nephew (witness No. 2,) and a servant (witness No. 3,) and both parties proceeded on together to Juggernaut, travelling in two carts. On their return homewards, they determined to take the temple of Boidinath on their way, and late one afternoon they

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convicted of
wilful murder
and sentenced
capitally.

reached a certain village in this district called Shuhurpore, where they put up for the night. It appears that that day was a fast day with the prosecutor, and after he arrived at the halting ground, he desired his servant (prisoner No. 4) to wash his *dhotee*. The prisoner refused to obey the order and a quarrel ensued, when the deceased interfered and rebuked the prisoner for presuming to abuse his master. He then turned towards her and told her to be silent, or he added, "*mohabharut kur denga*," which means that he would murder her. Here the dispute apparently ended, and after they had dined, they all settled down to sleep, some on, some under, and some close to the *gharrees*: the prosecutor's mother, his sister and the female servant were lying down close together. At about one *puhur* of the night remaining, the deceased awoke, and told her mother to go to sleep, and that she would sit up. Shortly afterwards she became sleepy and called out to the prisoner No. 4, that she was going to sleep and that he was to sit up and watch. On this the prisoner arose, and seizing a sword, got up on the deceased's chest, and stopping her mouth with his left hand, cut her throat with the sword with the other. The female servant (witness No. 1) was the first who gave the alarm, when the prisoner, having effectually accomplished his purpose on the deceased, attacked her and inflicted five wounds on different parts of her body, three of which were severe, one nearly cutting off a large piece of her scalp. By this time all the party were aroused, and as they came up to see what was the matter, each was attacked in turn by the prisoner. The witness No. 2 received a very severe wound, the sword struck him on the wrist, and seems to have glanced down the bone, separating from it the whole of the flesh of the under part of the fore-arm, more than half way down to the elbow. The witness No. 3 received a thrust of the sword in the arm after parrying with a stick three blows aimed at his head. Witness, No. 4, though he merely spoke to the prisoner from his *gharree*, and made no attempt to seize him, received a bad wound on the shoulder, which still gives him pain when he moves his arm. Another man, the son-in-law of witness No. 4, was also wounded, but he has not appeared. The prosecutor was a passive witness of all this from the *gharree* where he had been sleeping. He says he was afraid to move, lest the prisoner should kill him also. When the morning broke the party made enquiries of the ticcadar of the village of Shuhurpore (prisoner No. 6,) and were told by him and the prisoner No. 5, who came forward as the lalla on the part of the neighbouring Rajah of Jhumturra, Doolraj Sing (the son of Rajah Partubnaran Sing, whose murder was reported by me in

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my letter No. 92, dated the 3rd May 1852,) that the nearest thannah was 5 coss off and the nearest Adawlut 30 coss off, and that if a complaint was made, they would all be put to great trouble and inconvenience, and both prosecutor and defendant sent to jail, so that they had much better pay down what was the custom, and after burning the body, proceed on their journey. The party acted upon this advice, and the prosecutor gave to the prisoner No. 5, rupees 5 and a razai, and the witness No. 4 gave another razai. The latter started immediately to convey his wounded son-in-law to his home at the village of Serampore, while the prosecutor, after burning the body of his sister, pursued his way towards the temple of Boidinath, the prisoner No. 4 being still in company. The witness No. 4, after dropping his son-in-law at his home, resumed his journey towards Gya with his original party, and again fell in with the prosecutor and his party on their way towards the same place. It appears that ere they left Shuhurpore, they received strict injunctions from the prisoners Nos. 5 and 6, on no account to divulge what had happened at any place on the road. The witness No. 4, however, took the precaution to write a letter to his son, who carries on business at Gya, informing him of the occurrence, and requesting him to give information to the police, with a view to the apprehension of the prisoners as soon as they should arrive. The son happened to be absent at the time, but his servant, Mungar Kahar, becoming acquainted with the contents of the letter, immediately went to the police, and having obtained the assistance of two burkundauzes, proceeded on the road by which the travellers were expected. This witness states that as he came to a river 3 coss from Gya, he observed the prosecutor's gharree, and as he was enquiring of him whence he had come, he overheard the gharreewan call to his companion by name Fukeera, telling him to assist the gharree through the sand by pushing from behind. On hearing the name he concluded that this was the person he was in quest of, so he caused him to be taken into custody and conveyed to the thannah, thus the whole affair was brought to the notice of the magistrate of Behar.

The above narrative of the case has been taken from the statement made by the prosecutor, the depositions of six of his fellow-travellers (all eye-witnesses,) of the gharreewans of the two hackeries, and of the witness Mungar Kahar. The evidence of the witnesses is given in a clear and satisfactory manner and is consistent throughout, and I must say they have impressed me by their manner with the belief that they have spoken truthfully. The prisoner is said to have been frequently censured by the prosecutor for his negligence, and

the supposed ill-will, engendered by this censure, and by the dispute which took place in the evening immediately preceding the fatal occurrence, is the only motive assigned for the prisoner perpetrating this murder, and then running a muck amongst all who came near him.

The prisoner in his defence before the magistrate denied the charge and deposed that he did not know who cut the throat of the deceased, or who wounded the witnesses. He stated that four *gharrees* were travelling from Juggernath, and that when they arrived at the place in the jungle, the son-in-law of witness No. 4, who there gave his name as Munneeram, but was afterwards called Dhulloo, came and told them to halt there, and assured them there was no fear : that they then enquired what they were to do for food, as there were no moodies there ; Dhulloo replied, "Never mind, it is a long time since I have seen my father-in-law. I will prepare every thing for you ;" that they then took from his master Poorun Chund's *gharree*, rice, &c., on which they made their meal, Dhulloo bringing rice and milk, &c., for Poornaee. After dinner all went to sleep ; that at one *puhur* of the night remaining, all the people began to beat him, and wounded him in the arm with a sword ; Poorun Chunder, his mother, and the others being asleep in the *gharree*, he himself lying down about 7 *haunds* off ; that then the morning broke, and the chowkeedars came, and Dhulloo took from Rajaram rupees 5 and a *razai*, and that noon the son-in-law of Poornaee finally disposed of the matter. The remainder of the answer merely refers to how they resumed their journey, and need not be given in detail.

In this court the prisoner pleaded *not guilty*, and put the question, what had become of the companions of Poornaee Ma-hooree, several of whom he named as having been of the party.

Prisoners Nos. 5 and 6 are residents of Shuhupore and are proved to have become acquainted with the murder shortly after it occurred, having apparently come forward on the part of the zemindar, Rajah Dulraj Sing. They no doubt concealed the crime that had been committed, but they did not in any way receive, relieve, comfort or assist the murderer, and consequently their commitment on a charge of accessoryship after the fact was a mistake on the part of the officiating magistrate. A specific enactment meets their offence exactly, viz., Clause 1, Section XIV. Regulation XX. of 1817, which the magistrate should have acted upon, as indeed he did in the case of the village chowkeedar.

The jury, who sat with me on this trial, found the prisoner No. 4 *guilty* of wilful murder, and the prisoners Nos. 5 and 6 *not guilty* of the charge on which they were arraigned.

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and others.

I entirely concur in this verdict, and at once release the prisoners Nos. 5 and 6, leaving it to the magistrate to deal with them as above suggested. The case is without doubt a very remarkable one as concerning prisoner No. 4. The prisoner had been in the service of the prosecutor's family for two years. He had encountered with them all the trials and deprivations attendant on a pilgrimage to Juggernath, and then, as they were approaching the termination of their journey, he commits this foul murder on a female member of the family. He appears to have been frequently chided for his laziness, and this and the quarrel that took place on the evening preceding the murder may have rankled in his mind and incited him to commit the deed. Beyond this, no provocation, no motive is assigned, and I can gather no other from the circumstances of the case. It is also extraordinary how the rest of the party remained in company with the murderer for fifteen days after he had destroyed their relative before their eyes : this, however, may be accounted for perhaps by their utter helplessness. After witness No. 4 and his party had taken another route, the three women and the boy (prosecutor) were left alone with the prisoner, and they could scarcely be expected to know how to act or what to do under such painful and alarming circumstances.

The absence of any reasonable motive or adequate provocation, and the fact of their having remained together for so long afterwards are certainly calculated to create a doubt, and I must admit that the perpetration of such a murder by the prisoner does appear *prima facie* improbable, but on the other hand, that the prosecutor, or at all events the eye-witness No. 4, and his companions, who are entirely unconnected with the prosecutor, should have entered into a conspiracy against the prisoner, is altogether incredible : the depositions of the eye-witnesses, the letters* addressed by Poornae Mahooree to his son, which have been fully authenticated, the results they produced, and the purport of the prisoner's defence in the foudary court, which, on several important points, confirm the account given in the case for the prosecution, afford to my mind conclusive evidence of the prisoner's guilt. In his answer before the magistrate he said he was beaten at the very moment the murder is proved to have been committed. As to the reason why or by whom he was so beaten he is silent. He also stated that the rupees 5 and the two *razais* were given to the chowkeedar and gomashta, on the morning after the occurrence, but he does not

* Dated the 2nd and 8th of the Moon of Phagoon which take to be the 25th February and 3rd March.

say for what reason they were given; it may therefore be inferred that they were, as stated by the witnesses for the prosecution, given as hush-money, and he further admitted that Dhulloo "finally disposed of the matter"—what matter, it may be asked, was there to dispose of but the murder.

It is unfortunate, I think, that instead of any attempt being made to collect evidence on the spot of the police in this district, proceedings were taken against the villagers for concealment, thus were the mouths of those who could no doubt have satisfactorily corroborated the story of the travellers effectually and for ever closed. Such being the case, the acquisition of any further evidence for the prosecution on the spot is hopeless.

I am, however, perfectly satisfied with the evidence that has been adduced, which is, in my opinion, quite sufficient to remove all doubt of the prisoner's guilt. I would therefore, in co-operation with the verdict of the jury, convict him of wilful murder, and only because the body* has not been forthcoming in a state fit for examination by the medical officer, I would recommend that he be imprisoned for life in transportation beyond sea.

In reporting this case, I cannot pass over in silence the hardships to which the prosecutor and his witnesses have been needlessly subjected. The murder was committed on the 21st of February and was reported to the magistrate of Behar on the 7th of March last. At that time every person necessary to the disposal of the case was in attendance before him, and if he had acted, as in my opinion he ought to have acted, in accordance with the provisions of Section II. Regulation VII. of 1822, and obtained the sanction of the Nizamut Adawlut to his trying the case at Gya, five months' detention, a long and weary journey under constraint at an unfavorable season of the year, and a vast amount of annoyance and expense would have been saved to the parties concerned. I gather from the record, that on the 15th of March, the magistrate of Behar, supposing from the statements made by the prosecutor and witnesses that the offence had been committed in this district, ordered the prisoner and all the parties to be sent here, but from a proceeding of the sessions judge of Behar dated the 29th March, it appears that the prosecutor having appealed against the above order of the magistrate, the sessions judge reversed the same and directed the magistrate to make enquiries and first ascertain in what district

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* Some bones were found on the spot where the body is said to have been burnt and were sent in by the police.

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the offence had actually occurred. Accordingly, on the 2nd April, the magistrate addressed the criminal authorities of Beerbboom, Hazareebaugh, Bhaugulpore and Monghyr. On the 17th June, that is, after a delay of two months and a half, which is also much to be regretted, the magistrate of Beerbboom reported that the place where the murder had been committed was situated in this district. On the 27th of June, the magistrate of Behar, with reference to the above report, ordered his nazir to forward the prosecutor and witnesses connected with the case along with the prisoner, thannah by thannah, but warned the police to pass the former through their respective jurisdictions without putting them to any inconvenience. The parties arrived at Beerbboom on the 19th of July, and were committed to the sessions on the 25th idem.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and A. J. M. Mills.)—*Mr. J. Dunbar.*—I convict the prisoner Fukeera Gowala of murder, and also of the wounding charged in the 2nd count. I cannot accede to the proposal of the sessions judge to condemn him to imprisonment for life. The case appears to me to be one of daring and cold-blooded atrocity, calling for the most exemplary punishment. The non-production of the body is so clearly and reasonably accounted for, that I cannot regard this as any sufficient cause for mitigation of punishment. I would accordingly sentence the prisoner to suffer death.

I do not concur in the view the sessions judge has taken of the case, as it affects the two prisoners' release.

They were, from their local position, especially bound to do their utmost to bring such an offender to justice, yet, with a full knowledge of his guilt, they took money and some clothing to allow him to escape. This was, I think, such a relieving and assisting as the law contemplates in declaring what constitutes accessoryship after the fact. The commitment was therefore, in my opinion, quite correct.

Mr. A. J. M. Mills.—There can be no doubt of the prisoner's guilt. The proof is full and convincing. I concur with Mr. Dunbar in convicting the prisoner of wilful murder, and considering him not to be a proper object for mercy, I sentence him, as proposed, to suffer death.

The body was burnt, and the bones are of course not capable of recognition, but this circumstance cannot be permitted to bar the extreme penalty of the law, as the prisoner himself admits the death of the deceased and the body was seen with the throat cut by several witnesses. Further, there is most clear and direct proof that the prisoner cut her throat and wounded the other persons.

I would send copy of the last paragraph of the sessions judge's letter to the sessions judge of Behar, with instructions to send it to the magistrate and inform him he should have tried the case himself after obtaining the court's sanction to his doing so, and thus have saved, to the parties concerned, the annoyance, expense and inconvenience to which they have been subjected by going to Beerbhoom.

Mr. J. Dunbar.—I concur in this suggestion.

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 Case of
FUKERA
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and others.

 PRESENT:

H. T. RAIKES, Esq., Judge.

 GOVERNMENT AND MUDDUN SHIKDAR
versus

ROYCHAND JOGEE (No. 1,) MEHEROOLLAI (No. 2,) SHUREFOOLAH (No. 3,) FELLOO (No. 4,) KOOSHYE (No. 5,) SHEIKH MUNGUL (No. 6,) ZAHER (No. 7,) AND KULLIM MOOLLAH (No. 8.)

CRIME CHARGED.—1st count, river dacoity, in which property of the value of rupees 674-6-6 was carried off, and 2nd count, knowingly receiving the property obtained by dacoity on the 29th June 1853.

 BACKER-
GUNGE.

 1853.

CRIME ESTABLISHED.—River dacoity.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 19th August 1853.

Remarks by the sessions judge.—The prosecutor came into this district by boat from Jessore, with a small supply of cotton thread for sale. The prisoner, Roychand Jogee, on the day of the 29th June, had conditioned for the purchase of several bales, and was to have come the next day with the money, when the thread was to be delivered to him. The same night the boat was attacked by a gang of men, and the thread, together with some money, carried off.

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 Case of
ROYCHAND
JOGEE and
others.

 Conviction
and sentence
passed by the
sessions judge
in a case of
river dacoity
upheld in ap-
peal.

The next day, the prisoner Roychand Jogee, to evade suspicion, came again to fulfil, as it were, his bargain, when the prosecutor immediately, and in the presence of a number of the villagers, accused him of the dacoity. He denied the charge, but after some considerable persuasion from the villagers, he at length admitted his guilt and revealed the names of his associates. The chowkeedar committed the names to paper, and then started with the prisoner for the thannah. Before the darogah, the prisoner repeated the statement made to the villagers, and on the apprehension of the parties named, they also all confessed, and all of them delivered over various

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ROYCHAND
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others.

sums of money received by them, respectively, as their share of the plunder, and there was further found in the house of the prisoner No. 8 several bales of the plundered thread.

Three of the prisoners, Nos. 1, 2 and 3, confessed before the magistrate, the other five denied.

Before the sessions they all declared themselves innocent and avowed that their confessions were extorted.

The mofussil confessions of all, and the foudary confessions of some, were fully proved before me. It was also proved that the property delivered up by each prisoner, or found in his house, was admitted to be the produce of the dacoity.

The prisoners Nos. 5 and 7 were before convicted and served a term of imprisonment, and out of the house of the prisoner No. 4 was found a bunch of keys for picking locks. This proof of bad character led me to give the above three a higher sentence than the rest.

The case was one of simple dacoity and was free from any trait of aggravation. I tried the case under Act XXIV. of 1843.

Sentence passed by the lower court.—Nos. 4, 5 and 7, each to be imprisoned for ten (10) years, and Nos. 1, 2, 3, 6 and 8 ditto to seven (7) years, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoners Nos. 2 and 3 confessed the charge to the darogah and before the magistrate, and gave up property, admitting it was acquired by the robbery. The other prisoners, appealing, repudiated their mofussil confessions when brought before the magistrate, but it is proved against them in support of their confessions in the mofussil, that Nos. 4, 5, 6 and 7 gave up sums of money from 14 to 16 rupees, each admitting his acquisition by sale of the thread falling to his share, while in the house of No. 8 several bales and bundles of the stolen thread were found. These circumstances are, in my opinion, sufficient to justify the conviction of all the prisoners, and I therefore see no reason to interfere with the sentence passed upon them by the sessions judge.

PRESENT:

J. DUNBAR, Esq., Judge.

JOYGOPAL

versus

MOSAFIR (No. 1,) AND DUSNEEN (No. 2.)

CRIME CHARGED.—Theft of property valued at rupees 1,063-6-0, and knowingly having in possession part of the above property.

CRIME ESTABLISHED.—Accomplices in theft of property, valued at rupees 1,063-6-0.

Committing Officer—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 2nd. August 1853.

Remarks by the sessions judge.—The prosecutor, who resides in mouzah Mohunwah, was asleep in his house on the night of the 4th of May last, or 11th Bysakh 1260 F. S., there being a large chest, secured with a mahajunoo lock, in the same apartment, in which chest were contained various articles of property, consisting of jewellery, utensils and cash.

On awaking the next morning, the prosecutor observed that the lock of the chest had been opened, and the contents of the chest carried away. On this he proceeded to the thannah, and having given information returned home. A day or two after, Jhingut Chowkeedar (witness No. 14) came and told the prosecutor that he had got a clue to his stolen property, which was with the prisoner Dusneen (No. 2,) and the chowkeedar having also made a similar communication to Sendha Saloo (witness No. 15,) the latter also told the prosecutor. Upon this the prosecutor proceeded again to the thannah, where he gave a second information, and in consequence the thannah mohurir and burkundauzes came to make an enquiry. On searching the house of the prisoner Dusneen (No. 2,) in mouzah Bushtee, distant about one coss from Mohunwah, a brass *lotah* and a padlock were found, and on searching the house of the prisoner Chuthoo, a lad of about 12 years of age (which was in the same court-yard with that of the prisoner Dusneen, and of whom he is the brother-in-law,) a bell-metal *lotah* and *catorah* and a sliver necklace were found, Chuthoo stating at the time that those articles had been brought and left there by "Dusneen." When the police came, they found the prisoner Mosafir (No. 1) in Dusneen's house, and on his being taken up, he spontaneously produced and gave up first rupees 20, and secondly, rupees 28, which he confessed having stolen

TIRHOOT.

1853.

November 26.

Case of
MOSAFIR and
another.

Two prisoners, convicted
as accomplices
in theft, sentenced by the
sessions judge
to five years'
imprisonment.
Appeal re-
jected.

1853.

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Case of
MOSAFIR and
another.

from the prosecutor, and in consequence of this prisoner naming the prisoner Thug (No. 5,) the police, repaired to mouzah Beryarce, where the latter lived. On searching his house, however, no property was found, but the prisoner Musst. Belree (No. 4,) of her own accord, produced rupees 13 in cash, which she said her son "Thug" had given her to keep; that with other rupees he had bought some cows, and that he had still some more money; and the prisoner "Thug" having proceeded to Mooteharee to prefer a complaint against the prisoner Mosafir, for getting his house searched, was taken up at that station.

Several witnesses deposed to being present, when the articles of property above specified were discovered or voluntarily produced by the prisoners named, and two of the witnesses also, near neighbours of the prosecutor, identified the stolen articles discovered, with the exception of the rupees, not capable of identification.

The prisoner Mosafir (No. 1) voluntarily confessed before the thannah mohurir in the mofussil, and before the joint-magistrate, in the presence each time of attesting witnesses, who have so deposed, that he went one Thursday night in Bysakh, with "Dusneen" and several others, altogether eight, to the prosecutor's house; that he (prisoner) remained outside, while the others went in and stole several articles of property, including money.

The prisoner Dusneen also confessed both in the mofussil and foudary court, and also before subscribing and attesting witnesses, that Mosafir having sent two persons one Thursday night in Bysakh to call him, he (prisoner) went to the house of the former, where he found several others, including the prisoner "Thug," and all proceeding to Mohunwah. They first held a consultation, and afterwards, while he (prisoner) and "Thug" remained outside the village, the others went in and stole from the prosecutor's house two bell-metal *hathurs* or *lotahs*, which they showed to him (prisoner,) but they did not show him any rupees.

The prisoner Chuthoo, both in the mofussil and foudary, denying his *guilt*, pleaded that the prisoner Dusneen had placed a *lotah*, a *catorah*, a bell and necklace in his house.

The prisoner Musst. Belree, likewise pleading *not guilty*, stated in the mofussil, that she did not know how much money her son "Thug" had stolen somewhere in mouzah Mohunwah, with some of which he had bought two cows, having given her rupees 13 to keep for him. Before the magistrate, however, first making a similar statement, she, on being questioned as to her receiving the money from her son with a knowledge of its being stolen, answered that

her son had not stolen the money, but that having received it from a mahajun he had entrusted it to her to keep for him, which money she had given up to the mohurir.

The prisoner Thug all along pleaded *not guilty*.

In this court all the prisoners pleaded *not guilty*.

Mosafir (No. 1,) in his defence, denied having made any confession in the mofussil or foudary court, and further pleaded, that having complained against Jhingut Chowkeedar (witness No. 14,) for grazing his cattle on his (prisoner's) field, the chowkeedar had in revenge suspected and implicated him. He had only witnesses to call to his good character, but even that they did not establish, while it also appeared in evidence that this prisoner had, not long before this, been convicted and imprisoned for two months for a petty theft.

Dusneen (No. 2) pleaded, that some one had thrown into his house the property found there and got him falsely implicated. He too only cited witnesses to his good character, but they could say nothing in his favor.

Chuthoo Chokra (No. 3) pleaded, that he only confessed in the mofussil on the tutoring of Jhingut Chowkeedar (witness No. 14,) and that in the foudary court the mohurrir merely copied what was written down in his mofussil confession. He called no witnesses.

Musst. Belree (No. 4) urged, that the money which her son had brought and gave her to keep, he had received from a mahajun. She cited one witness, who admitted having given to the prisoner "Thug" (this prisoner's son) 8 rupees, and that "Thug" had pecuniary dealings with him and bore a good character.

Thug (No. 5) defended himself by stating, that he sold rupees 13 worth of grain to one Rumsahye Misser, which was the money he gave in keeping to his mother. He called five witnesses, one of them the said Rumsahye Misser, who, however, deposed to knowing nothing, two gave the prisoner a good character, and the other two deposed to his being a person of respectability and some substance, and carried on pecuniary dealings, one of them stating that he had bought and paid the prisoner rupees 10 for cows.

The *futwa* of the law officer finding no crime proved against them, acquits the prisoners Chuthoo, Musst. Belree and Thug, and convicting the prisoners Mosafir and Dusneen of being accomplices in the theft charged, pronounces them liable to discretionary punishment by *tazeer*. I concurred in opinion with the mooftee, that no evidence has been adduced to establish a receipt of property with a guilty knowledge of its being stolen against either of the prisoners

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Case of
MOSAFIR and
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and another.

Chuthoo or Musst. Belree, and that beyond his being named by the prisoners Mosafir and Dusneen, there is nothing on the record to criminate the prisoner Thug, and they were all three accordingly discharged. As I agreed also with my law officer in considering the crime of being accomplices in the theft to be fully and satisfactorily brought home to the prisoners Mosafir and Dusneen, they have been convicted and sentenced as shown in the appropriate column.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The conviction is good and the sentence is confirmed. As property to the value of only rupees 85-8 appears to have been recovered, the case is one in which the imposition of a fine, under the provisions of Act. XVI. of 1850, would have been appropriate.

PRESENT :

A. J. M. MILLS, Esq., Judge.

GOVERNMENT

versus

MEER RAMZAN ALEE.

PATNA.

1853.

November 26.Case of
MEER RAM-
ZAN ALEE.

Prisoner convicted of forging and uttering a mooktarnama, by means of which he continued to draw the pensions of two old women who had died. Sentence passed by the officiating commissioner affirmed in appeal.

CRIME CHARGED.—1st count, forgery of a *mooktarnamah*; 2nd count, uttering the above-mentioned forged *mooktarnamah*, knowing the same to be false and fabricated, and 3rd count, fraudulently receiving, by means of the said forged *mooktarnamah*, knowing the same to be false and fabricated, Company's rupees 346-12-6, or thereabouts, from the treasury of the collector of Patna, being the amount of six quarterly pensions of rupees 57-12-9 each, of Mussts. Shayestee Begum and Motee Begum.

CRIME ESTABLISHED.—Forgery, &c., as detailed in crime charged.

Committing Officer—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. B. J. Colvin, officiating commissioner, with the powers of a sessions judge, on the 27th of September 1853.

Remarks by the officiating commissioner, with powers of a sessions judge.—This is a case of forgery, &c., for the purpose of receiving pensions on account of parties after their decease. The execution and uttering of the *mooktarnamah* and the receipt of the money are not denied, and have been amply proved; the only question is, whether the parties Mussts. Shayestee and Motee Begums, represented as dead, are alive

or not. The prisoner asserts that they are living, but although one is his step-mother and the other his step-sister, and although he says, that they are in zillah Behar, they are not forthcoming. The case was commenced on 6th of August and has been postponed to the present date, during which time they might have been produced had they been in existence, without reference to the time the case was pending in the collectorate and in the magistrate's court. The evidence for the prosecution supports the fact of their being dead, and is corroborated by a report No. 129, dated 2nd instant, from the Sudder Board, that the pensions were granted in 1788, and that in 1819 the age of Shayestee was enquired into and found to be about 55 to 60, and of Motee 40 to 50, which would make the former now about 89 to 94, and the latter about 74 to 84.

The evidence for the defence fails to prove the existence of the parties.

The law officer convicts the prisoner of the offences charged, in which I concur, and declares him liable to *tazecr*. I have accordingly sentenced the prisoner, as entered in the proper column, labor and irons have been excused on account of age and infirmities.

Sentence passed by the lower court.—Imprisonment in the zillah jail for seven (7) years, without labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoner has appealed. He urges, that the period which has elapsed since the death of Shayestee Begum and Motee Begum is variously stated by the witnesses, and that they are in existence. I concur in opinion with the officiating commissioner, that no reasonable doubt can exist of their deaths, and that they both demised prior to the 22nd of June 1851. I see no reason to interfere with the conviction and sentence and reject the appeal.

1853.

November 26.
Case of
MEER RAM-
ZAN ALEE.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT AND KALIKOOMAR NAG
versus

LUKHEENARAIN (No. 33), BHOYRUB CHUNDER DAY (No. 34), AND SHURUFOOLLAH (No. 35.)

BACKER-
GUNGE.
—
1853.

November 26.

Case of
LUKHEENA-
RAIN and
others.

The prison-
ers, convicted
of riot with
culpable ho-
micide, were
acquitted in
appeal.

CRIME CHARGED.—Riot attended with the culpable homicide of Ramlochun Nag and the wounding of Adoo Khulleefa.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Ramlochun Nag and the wounding of Adoo Khulleefa.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 23rd July 1853.

Remarks by the sessions judge.—This is a supplemental trial to one decided at the sessions of this district on the 29th November 1852.

An appeal was made by certain persons then convicted, whereupon the following remarks were recorded by Mr. Mills, the presiding judge :—

"The evidence appears to me to disclose the real facts of the case, and is, I think, impartial and good. It would seem that there were two riots; that the Nag's party had in the morning seized and carried off two *ryots* of the defendant; that in the afternoon the defendants went with an armed force to seize some of the *ryots* of the plaintiffs; that on their attacking the house of the plaintiff, they were resisted by the latter and his men also armed; that a fight ensued, and that the deceased fell into a tank and was there wounded by a fish spear. On this occasion the defendants were no doubt the aggressors. I see no reason to distrust the fresh evidence, because the witnesses maintained silence for so long a period: the riot occurred in the day time in a village and was no doubt witnessed by hundreds of persons, but their opinions are not those of Europeans, actuated by a proper public spirit: the latter would come forward and offer their testimony: the natives would, on the contrary, to avoid the harassment of attendance of court, prefer paying a *douceur* to the police. The witnesses have deposed distinctly to the prisoners taking an active part in the riot, and the *alibi* set up by the prisoners has availed them naught. Concurring in the conviction, I reject the appeal."

The prisoner Shurufoollah (No. 35) was named as a party concerned in the affray, in the very first report taken of the

affair to the darogah. The other two defendants, Lukheenarain (No. 33) and Bhoyrub (No. 34) were named also by a great number of witnesses examined at an early stage of the investigation. Several of these witnesses repeated the names of these prisoners in their depositions, taken for the first time before the magistrate. The prisoners were then not on their trial, and all who named them at the police did not name them before the magistrate. On their apprehension lately, and on their trial before the magistrate and before the sessions, eight witnesses were produced and examined in the presence of the prisoners. Of these some recognized all the prisoners, and some one or more of them, and in this way evidence much more was obtainable, if it had been necessary; but that already recorded amounted to legal proof, each prisoner being named by more than two witnesses.

The prisoners all denied being in the affray, but only No. 35, Shurufoullah, named any witnesses.

The prisoners have, it seems to me, relied upon their acquittal, from the fact, that in the original case there were two different investigations. The sessions judge on the trial deemed a second local investigation advisable, from most of the witnesses originally sent in being dependants or relatives of the Nags. Although the second enquiry confirmed in every particular the truth of the first, Mr. Annand seems to have thought, that only those against whom the evidence last taken established the charge could safely be pronounced guilty, and with this belief he acquitted several persons. Now the prisoners at the bar have not been named by any party examined in the last investigation, and from this, they seem to expect that they will be held guiltless. The jury has, however, convicted them, and I think rightly. Had the second investigation falsified the first in any material particular, then the evidence first taken would have to be rejected as not fit to be relied upon, but the last investigation proved the correctness of the first and established the truth of the testimony originally given. The guilt then of the parties concerned is not to be judged of by the result of the last investigation, but by the first, and I hold it to be a great mistake to make the last investigation the test of guilt. It was wise to seek the evidence of unconnected and disinterested parties, as to the origin and the particulars of the fight and who provoked it, but the guilt of individuals participating in that fight should not be limited to the evidence of such witnesses. The parties who were mutually opposed to each other in this case were the immediate relatives and adherents of each. Almost all were residents of the same village. The fight occupied considerable time, and

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those who were engaged in it, and who witnessed it, could easily and certainly distinguish and recognize a great number of the persons engaged. It is not surprising then, that each witness has sworn to 40 or 50 persons, nor is it at all to the discredit of their testimony that the witnesses have not all named the same defendants, in their several examinations before the police and before the magistrate. The prisoners are, from their connection with the parties, likely persons to have aided one side or the other; they were sworn to as having been present by numerous witnesses, and that by parties who were consistent in their evidence before the police and before the magistrate.

Coinciding with the verdict, I sentence each prisoner to the same degree of punishment as that awarded to the parties originally tried.

Sentence passed by the lower court.—Each to be imprisoned for three (3) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The evidence taken on the first investigation was not relied on, as it was that of persons under the influence of the prosecutor, and was inconsistent and improbable in itself. The prisoners have not been named by any party at the second investigation, and as I am not satisfied with the evidence now given to their identity, I acquit them and direct their release.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT, NUFFER MUDUCK, BHOIRUB
DUTT, AND GOPAL CHOOTAR

versus

SREEMUNT KHYRA (No. 7,) JODOO MUNDEL (No. 8,) BINUD MUNDEL (No. 9,) SREEDHUR LOHAR (No. 10,) TAKOORDASS LOHAR (No. 11,) MODHOO ROY (No. 12,) GUNGADHUR ALIAS GUNGARAM KHYRA (No. 13,) AND KASHEENATH KHYRA (No. 14).

CRIME CHARGED.—1st count, dacoity on the night of the 26th January 1853, corresponding with the 14th Magh 1259 B. S., in the houses of Nuffer Muduck, Bhoirub Dutt and Gopal Chootar, and plundering therefrom property* of the value of rupees 455 and 4 annas; 2nd count, Nos. 7, 12, 13 and 14, knowingly receiving and keeping in possession property plundered in the above-mentioned dacoity; and 3rd count, Nos. 7, 10, 11, 12, 13 and 14, with belonging to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity in the houses of the prosecutors, Nuffer Muduck, Bhoirub Dutt and Gopal Chootar, and plundering therefrom property to the value of rupees 455 and 4 annas.

Committing Officer—Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbetta.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 7th September 1853.

Remarks by the sessions judge.—As there were three prosecutors, the deputy magistrate at Gurbetta at first committed the prisoners in three separate cases, but as the evidence was nearly the same in all, I cancelled the commitments on the 6th June last, and directed him to make only one case of it.

The houses of the three prosecutors were close together; there was moon-light; only one *mussal* appeared to have been used; and the three robberies were perpetrated one after the other, without any peculiar attendant circumstances, or violence.

As Mantubber Sheikh, (witness No. 20,) servant to the prosecutor Nuffer Muduck, had warned him that a dacoity was likely to occur on the night indicated, two chowkeedars were with him when the attack was made, but they were apparently overpowered and unable to resist.

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Conviction
and sentence
passed by the
sessions judge
in a case of
dacoity, af-
firmed in ap-
peal.

* Namely, from the house of Nuffer Muduck for rupees 233-3, from the house of Bhoirub Dutt for rupees 170, and from the house of Gopal Chootar for rupees 52-1.—Total rupees 455-4.

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The witness above-named stated, that he had received his information from his relation, Gholam, who had it from one Imdad, a peadah employed by one Kisto Lamooa, a mahajun residing in Bishenpore, and having business at Mudhoobun, a village some little distance therefrom. Nothing could be extracted from the said Imdad when examined in the mofussil, but an acknowledgment that he had advised Gholam not to go out on the night of the 14th Magh.

Pursuit of the robbers was forthwith commenced by the police, witnesses Nos. 1, 2, 3, 4, 19, 25 and 26, the prosecutor Nuffer Muduck and others. Prisoners Nos. 7, 8 and 9, were those first apprehended. The first was caught at his own house by witness No. 1, Kartick Sirdar, and the other two ostensibly by Tegh Alee, burkundauze, and Purmal Metiah, chowkeedar, (witnesses Nos. 2 and 19,) in the bed of the Dalkesher River, after they had thrown down a bundle and sack, which were found to contain part of the property taken from the house of the prosecutors Nuffer and Bhoirub.

Koorban burkundauze (witness No. 3) was sent by the darogah to watch the road, passing along the Beeraee Nuddee to the north. He remained there some time and saw no one. On turning back, with the intention of going to the locality of the robbery, he was met by Kashee Sootar and others, chowkeedars, who told him that the prosecutors had recognized one Rama Bagdee and others among the dacoits. On hearing this, he went to that individual's house, who denied having been at the dacoity, but indicated the prisoner Sreedhur (No. 10) as likely to have been engaged in it, because he had seen him going backwards and forwards to Mudhoobun, while fishing in the Beeraec. The darogah, when informed of this, sent the burkundauze to bring Sreedhur from Gossainbaree, a village nearly a *coss* distant. He did so, and also Thakoordass, (prisoner No. 11,) whom he found inside Sreedhur's hut, after that individual had affirmed that he had nobody with him. Sreedhur said he had not been at the robbery, but that he could tell all about it by and bye. On the way back to the thannah, Sreedhur said, that the prisoners Modhoo Roy, Sreemunt, Gungadhur *alias* Gungaram, and Kashee (Nos. 7, 12, 13 and 14) had been at the dacoity, and could point out the property taken. The darogah having gone to Mudhoobun, the burkundauze took the prisoners Nos. 10 and 11 to him at that place. On their way they found the prisoner No. 7, Sreemunt, under guard at his own house, and the burkundauze and the prisoner No. 10 persuaded him to point out where he had concealed his share of the property, but it was not given up at that time. Sreemunt said, his brother and cousins (prisoners Nos. 12, 13 and 14) had got other portion of the property and

pointed out their houses. The burkundauze could not find them, whereupon Sreemunt said they had gone to Dappanjoree, about five *coss* from the houses of the prosecutors. The burkundauze sent notice to the darogah, who came and received the property from Nos. 19 to 24, concealed by Sreemunt, which he took out with his own hands from some jungle. The prosecutors Nuffer and Bhoirub, who were with the darogah, immediately recognized these articles as their property. The darogah then sent off witness No. 4, Heera Santra, to capture the prisoners Nos. 12, 13 and 14, and told the burkundauze to take on Sreedhur, Takoordass and Sreemunt, with him to the locality of the dacoity. The burkundauze on the way asked Sreedhur to give up any property that he might have concealed, when he said, that he had nothing but a matchlock, which he had taken from one Bhoobun Lohar, when retiring from the dacoity, and hidden it in a heap of straw belonging to a Mussulman, named Deenoo. On hearing this, the burkundauze went and found the matchlock on the spot indicated. The burkundauze then took the prisoners back to the darogah, who took charge of prisoners Nos. 10 and 11, and ordered the burkundauze to take prisoner No. 7 with him as identified, and hurry Heera Santra. When these two had gone a little way from Mudhoobun towards Dappanjoree, they met the said Heera bringing along prisoners Nos. 12, 13 and 14, who were asked for property. At first they denied having any, but on prisoner No. 7 saying, that he had given up his share, they acknowledged that there was some in the bed of the Beerace, and going to the spot, after some little dispute as to which of them should put his hand to it, prisoner No. 12 produced a brazen *kulsee* and a bundle from the water under an overhanging bush. The bundle contained (with the *kulsee*) property from Nos. 25 to 48, subsequently identified as that of the three prosecutors. When the prosecutor Nufier Muduck was examined at the thannah, he averred that he had recognized three persons, named Bhoobun Lohar, Julliar Bagdee and Sona Baoree. The third prosecutor, Gopal Chootar, also said, that he had seen Bhoobun Lohar and one Kurpo Chassa. Both affirmed that their recognition was *andazee* or *guess work*, and nothing tending to implicate the persons named, except the prisoner Sreedhur's statement about the gun taken from Bhoobun, was afterwards discovered. The prosecutors also suspected Kisto Lamooa, before-mentioned, as either the fence or instigator of the dacoity, but though his house was searched, nothing against him could be elicited. Imdad, his peadah, however, alleged that prisoners Nos. 7, 8, 9, 12, 13 and 14 were his debtors and therefore at his command.

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All the prisoners, except Nos. 8 and 9, confessed at the thannah; Nos. 7, 10 and 11 named each other, as well as the residual prisoners. The confession of Nos. 12, 13 and 14 was to the effect, that Sreedhur and one Munsaram had brought the property found in the Beeraee to them while watching sugar-cane, and hidden it in their presence, after they had refused to take charge of it. They also stated, that when Sreedhur had left them, he had a matchlock in his hand. The confessions of Nos. 7, 10 and 11 were taken on the morning after the dacoity, and apparently in the presence of the prisoners Nos. 8 and 9, who denied all participation in the deed. Nos. 7, 12, 13 and 14 repeated their confessions nearly in the same terms before the officiating joint-magistrate. Nos. 10 and 11 retracted, and Nos. 8 and 9 adhered to their original denial and story. The fact, the apprehension of the prisoners, the *sooruthal*, the finding and identity of the property, and the confessions, were duly and sufficiently sworn to.

The prisoners pleaded *not guilty* before the sessions court, but with the exception of Nos. 8 and 9, could neither make nor substantiate any plausible defence. No. 7 said he was at home and that the property found was his own.

No. 10 denied any knowledge of the dacoity, and affirmed that he was at home, and that he had never been imprisoned in any previous case.

No. 11 declared, that he had come to his cousin Sreedhur's house to fetch away his sister, and that he could not have been at the dacoity, because he did not see distinctly at night.

Nos. 12 and 14 asseverated, that the burkundauze, Koorban, had taken them from their own houses to where the property was hidden in the Beeraee, and made them remove and deliver it, as plunder placed there by Sreedhur and Munsaram; and No. 13 said, that the darogah had beaten him and forced him to confess matters of which he knew nothing.

The evidence of the witnesses adduced by the above six prisoners failed to support their allegations. I considered the crime charged in the 1st count fully proved against Nos. 7, 10 and 11, and that there was violent presumption of the complicity of Nos. 12, 13 and 14, and therefore convicted and sentenced them as noted.

No. 10, Sreedhur, received two (2) years more than the others, because he had been previously imprisoned for three months in a case of wounding and attempt at robbery, tried and disposed of by the deputy magistrate on the 30th of April 1852.

The defence of the prisoners Nos. 8 and 9, which was consistent with the story told by them at the thannah and before

the deputy magistrate, was that they had been captured by the burkundauze, Tegh Ullee, and Purmah Metiah, chowkeedar, (witnesses Nos. 2 and 19,) and their *posse*, in a sugar-cane *khet*, on the immediate bank of the river, without their having had the most distant notion of what had happened ; that they had supposed the noise and outcry, approaching them from the other side of the river, to be occasioned by the pursuit of a bear coming towards their field, and that, by the advice of Koocheel Paul, (witness No. 34,) they had gone to the edge of the bank and shouted in a threatening manner, with the intention of driving it away, just before the *posse* came up and seized, first, Binode, who was in the watcher's hut, and then Jadoo, who came to his rescue. Prisoner No. 8 particularly mentioned, that he had pointed out the absence of sand and wet on his brother's legs and feet to the burkundauze, as a sign of his not having come from the other side of the stream, and the witnesses, who deposed in the defence of both, supported their allegations in a full and satisfactory manner. The evidence of the burkundauze, in regard to what occurred when the capture of those prisoners took place, was evidently false. In his deposition at the thannah, he said that *three* persons first ran off, that he had seized the *third* when four or five men came out of the village, beat the deponent with *lattees* and rescued him, and that the fugitive kept a *lattee* behind him, which was produced. In the deputy magistrate's court, he stated that *four* *persons* had fled at first, that on the capture of prisoners Nos. 8 and 9 their *two* companions got off, and that the villagers would have rescued the prisoner if he had not drawn his sword and overawed them.

Before the sessions court he declared that *four* or *five* persons had fled in the first instance ; that Jadoo and Binode were captured, but their *three* companions got clear off ; that the villagers then came out and attempted rescue, but retired before his drawn weapon and undaunted countenance. The other witnesses to the capture gave equally untrustworthy evidence of nearly the same nature, and averred, that the prisoners, who were already in the river bed, when seen threw down their bundles at the cry of "*mar salah kē*," "*dhor salah kē*," and fled, and that they were nevertheless caught a little beyond the stream and at about 25 cubits distance from the bundles.

The prisoners were mentioned in the thannah confessions of the prisoners Nos. 7, 10 and 11, and in that made by No. 7 before the deputy magistrate, but the way in which they were mentioned was suspicious. It was evident that the prisoners Nos. 8 and 9 had been seen by the others before they confessed. Sreemunt's thannah confession mentioned them *last of all* in his list of dacoits. Sreedhur said, Jadoo and Binode

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had been with them *in answer to a last question of the darogah*, but that he had not known their names before their capture, and Takoordass made a similar statement.

Under all these circumstances, it appeared to me, that the evidence of the prosecution, as to the alleged capture of the prisoners, must be false; that the true dacoits, who could not under any circumstances have been caught close to the bundles, must have taken advantage of the arrest of their cowardly pursuers, by the accidental diversion made by the prisoners, when they shouted on the bank at the supposed bear and got off, and that the burkundauze and his posse, when they had recovered their courage, advanced to the river bank and seized the prisoners in the manner described by them and their witnesses.

Being sufficiently convinced of the correctness of this opinion, I acquitted Jadoo and Binode, and directed their immediate release.

I at the same time ordered that the property recovered should be restored to the three prosecutors, and the matchlock and lattee confiscated, and that the evident falsehood and worthlessness of the burkundauze, Tegh Ullee, should be brought to the deputy magistrate's notice.

The conduct of the darogah of Bishenpore, Mudhoosoodun Sookool, who made the investigation in a quick and energetic manner, was also duly commended to that officer.

Sentence passed by the lower court.—Prisoner No. 10, to imprisonment with labor in irons in banishment for twelve (12) years and two (2) years more in lieu of stripes, total fourteen (14) years' imprisonment, with labor in irons in banishment, and prisoners Nos. 7, 11, 12, 13 and 14 to imprisonment each with labor in irons in banishment for ten (10) years and two (2) years each in lieu of stripes, total twelve (12) years' imprisonment each, with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The conviction is good. Prisoners Nos. 7, 10 and 11 confessed to having accompanied the gang, for the purpose of committing dacoity, although they wish it to be believed that they took no active part in the plunder.

Nos. 12, 13 and 14 deny any personal concern in the affair, but the circumstances under which they produced a quantity of the plundered property, coupled with the fact of their implication by the others and their inability to make good their own story, that the property was hidden by others, afford strong presumption for believing that they formed part of the gang.

The sentence is confirmed.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

SUNKUR CHUNG.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer—Baboo Chunder Sekur Roy, deputy magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 27th October 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed by the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits. He pleads *guilty* to the charge.

The evidence of an approver witness convicts him of having been concerned in five dacoities, and he has made a detailed confession, before the deputy magistrate under the commissioner for the suppression of dacoity, of having participated in 20 others. The record of five of the cases admitted by the prisoner show that the dacoities took place, and confirm the truth of his confession. The prisoner's admissions are without reservation and he makes no other defence.

I convict the prisoner of having belonged to a gang of dacoits, and propose that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar).—The approver, in his original confession, mentioned the prisoner as having been concerned with him in 10 dacoities. In his deposition on oath he has given details of five of these, and the prisoner himself, in confessing to having joined in ten separate dacoities, mentions seven, in which he was associated with the approver, five of these being the very dacoities, of which the latter has given detailed particulars. The conviction is confirmed, and the prisoner is sentenced to imprisonment for life in transportation beyond sea.

HOOGHLY.
1853.

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Case of
SUNKUR
CHUNG.

Prisoner
convicted of
having belong-
ed to a gang
of dacoits, sen-
tenced to trans-
portation for
life.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

MOKIM CHOWKEEDAR.

RAJSHAHYE.

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Case of
**MOKIM
 CHOWKEE-
 DAR.**

The prisoner,
 who was
 convicted of
 perjury by the
 sessions judge,
 was acquitted
 by the superi-
 or Court, on
 the ground
 that the depo-
 sition charged
 as false was
 not on a point
 material to the
 issue of the
 case in which
 it was given.

CRIME CHARGED.—Perjury, in having, on a solemn declaration, instead of an oath, deposed on the 15th of August 1853, before the sessions judge of Rajshahye, that Kissoree Busnabee was not delivered over to him on a charge of setting fire to the house of Kaleenath Dutt, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 31st August 1853.

Remarks by the sessions judge.—The prisoner was a witness in the first trial held here and included in this statement. Before me he denied that the prisoner, Kissoree Busnobeec, had been apprehended and made over to him on a charge of arson. It, however, being fully proved that she had been made over to his custody, I directed his commitment and hence the trial. The witnesses to the fact having confirmed their former statements, and the defence having totally failed, I have, concurring in the *futwa*, sentenced the prisoner as herein stated. The *thannah* report in a manner bears out the charge, the prisoner having reported that the woman had escaped, and he was examined on the subject. I have no doubt he was well paid to let her off, and the laxity of the Beauleah chowkeedars is rather notorious.

Sentence passed by the lower court.—Imprisonment for three (3) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar)—The conviction in this case cannot be upheld. In cases of perjury the deposition charged as false must be on a point material to the issue of the case. The prisoner denied having received charge of a woman, who was arraigned and punished for setting fire to certain houses. He may have told a lie in saying so, or he may not, but the truth or falsehood of his deposition upon this point was not material to the issue of the charge of arson.

The Court direct that the prisoner be discharged.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

NACHIR SHAH.

CRIME CHARGED.—Perjury, in having, on a solemn declaration instead of an oath, deposed, on the 27th August 1853, before the sessions judge of Rajshahye, that he is not the uncle of Sonatun, who is a defendant in an arson case, of which Mathoo Sirdar, &c., are the prosecutors, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 8th September 1853.

Remarks by the sessions judge.—The charge in a manner explains the case. The prisoner was examined as a witness to the defence of Sonatun Shah, a prisoner, included in trial No. 11, for the month of August, and on being interrogated denied being his uncle. However, as the witnesses Nos. 1 and 2, who were watching the trial, said he was his uncle, he was sent to the magistrate and by him committed on their evidence. He pleaded *not guilty*, and the two witnesses above alluded to, deposed to his being Sonatun's uncle. There were five witnesses for the defence, one deposed to the same effect, and the second that he did not know Sonatun, the other three, it was reported, had gone to Rungpore to sell oil. As he might have had any number of the villagers that were present in the other trial to establish his defence, I saw no reason to postpone the case again, and I have, under the *futwa*, sentenced him to three (3) years' imprisonment, without labor or irons, as he is an old man. As three out of the four witnesses deposed to the relationship, and the fourth did not know the other person at all, I think the moulvee might have found the crime was established on full legal proof, instead of violent presumption.

Sentence passed by the lower court.—Three (3) years' imprisonment without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The false deposition was no doubt made with a view to give more credibility to the evidence the prisoner was giving in favour of a relation, charged with a very heinous offence.

The conviction is good and the sentence is confirmed.

RAJSHAHYE.

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NACHIR
SHAH.

Prisoner
convicted of
perjury, sen-
tenced by the
sessions judge
to three years'
imprisonment.
Appeal reject-
ed.

PRESENT:

SIR R. BARLOW, BART., Judge.

GOVERNMENT, NAZIR MAHOMED, AND SHEIK
BHATOOG
versus
SHEIKH JOREEP.

MYMRN-
SINGH.

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Case of

SHEIKH
JOREEP.

Prisoner convicted of culpable homicide sentenced to six months' imprisonment.

CRIME CHARGED.—Wilful murder of Musst. Motee Bewa.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. C. E. Lance, assistant, with the powers of a joint-magistrate at Jamalpore.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 29th August 1853.

Remarks by the officiating sessions judge.—From the statement of the prosecutor and witnesses, Nos. 1, 2, 3, 4, 9, 10 and 11, it appears that four or five days previous to the date of occurrence, the prisoner quarrelled with his wife, who ran over to the deceased's house and he followed her there, when a dispute arose, and in the scuffle fell upon a *churkah* belonging to the deceased and broke the iron pin. Upon this the deceased began to abuse them, and since that time constantly demanded another in lieu of the broken article, and the prisoner, in revenge for the abuse which he received from her, finding her in a *dhan* field adjoining her house after dusk on the evening charged, assaulted her severely with kicks and blows. The screams of her children soon attracted the notice of witness No. 9 and his mother (No. 10,) who live in the same house, and they ran out to see what was the matter ; and the prisoner seeing them coming, left her and ran off. Witnesses Nos. 4 and 2, also, immediately came up, and finding deceased exhausted and faint, they assisted her into the house, and she told them and the other villagers, who came to see her, that the prisoner had thus ill-treated her ; that she threw up blood in the night and died next day at noon, from the effects of the beating. The body was examined by the civil assistant surgeon when sent into the station, and he declared the cause of death, in his opinion, to have resulted from a superficial laceration of the spleen, which was in a diseased state and could have been ruptured with a blow of no great violence. In the thannah, prisoner denied the charge, but before the magistrate he confessed having kicked her twice on the back, on the evening, in the *dhan* field, when she fell down and began to scream, and in describing the cause of the assault, he stated that he had an intrigue with one Shoylah Bewa, which deceased reported to the *ijaradar*, and for which he was fined rupees 5 ; and the Bewa having through disgrace

left the place, he was deprived of her company ; that the deceased was also in the habit of taunting him on the subject ; that he did not intend to kill her, and the kicks were not so severe as to deprive her of life, and he had no enmity with her. In this court he said that deceased was in the habit of taunting him, and as she was abusing him on the evening in question, he caught her in the *dhan* field and gave her two kicks on her back. He declined to examine any witnesses on his behalf. The *Sutwa* of the law officer convicts the prisoner of culpable homicide and declares him entitled to punishment by *deyut*, in which finding I concurred. The assault was doubtless severe, and it may have been pre-meditated, but there is not sufficient evidence to induce a belief that murder was intended ; no murderous weapon was used, and the prisoner only admits having given the deceased two kicks on the back ; and although the assault took place in the evening, death did not ensue till the next day at noon, and the rupture of the spleen, which was in a diseased state, was no doubt the immediate cause ; still, as the assault was unjustifiable and death having followed in consequence, I think the punishment awarded sufficient.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner confessed throughout the court to having kicked the deceased, in consequence of some disagreement with his wife. Two children saw the assault, but were not examined : the deceased, however, named the prisoner as having beaten her to two witnesses. The medical officer is of opinion, that deceased was suffering from a diseased spleen, and that a slight blow may have ruptured it and caused death. The case does not present any circumstance of aggravation such as would justify the sentence passed by the sessions judge, which is therefore reduced to six (6) months' imprisonment, with fine of rupees 20, and labor in default of payment in fourteen (14) days.

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Case of
SHEIKH
JOREEP.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MUSST. KABOOTREE
versus
FOUZDAR.

SARUN.

—
1853.

CRIME CHARGED.—Wilful murder of Gogur Pausee.
CRIME ESTABLISHED.—Culpable homicide of Gogur Pausee.
Committing Officer—Mr. J. F. Lynch, deputy magistrate of

November 30. Sewan, with powers of magistrate.

Case of
FOUZDAR.
Prisoner

convicted of
culpable ho-
micide, sen-
tenced by the
sessions judge
to four years'
imprisonment.
Appeal reject-
ed.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 17th July 1853.

Remarks by the sessions judge.—The homicide charged in this case arose out of a quarrel which took place at a grog-shop, relative to the sale of some liquor, and was not, in my opinion, pre-meditated. It appears that the prisoner, who is a very strong and powerful man, had gone to the shop, and having had some drink, wanted more, upon which it was objected that he had not paid for what he had had, and it is probable that some abuse passed between him and the deceased, when he suddenly took a heavy stick, called a *banta* (used for sharpening knives, &c.), which was placed close at hand, and with it struck the deceased over the head and killed him on the spot. He then ran off, but was followed and very shortly secured. On his trial he denies having struck the man, and says on the contrary that the deceased and another man in the shop (Dollar, a witness) beat him, and knocked him down senseless, and that he does not know how the man was hurt, but there is full proof of his having killed him by the blow he struck, and as the moulvee also convicts him, he has, in accordance with the *futwa*, been convicted and sentenced for the homicide, as noted.

Sentence passed by the lower court.—Four (4) years' imprisonment without irons, and to pay a fine of 50 rupees on or before the 17th July 1853, or on default of payment, to labor until the fine be paid, or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner in his petition of appeal admits, that he was at the liquor-shop and was drunk. He says, that some others killed the deceased and fled, but he does not know who they were. The Court find the conviction good and confirm the sentence.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MUTTEE GOPE
versus
NUHURDEE SHEIKH.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor and stealing therefrom property valued at rupees 4-10-6; 2nd count, being an accomplice, aiding and abetting in the commission of the said crime; and 3rd count, having in his possession property acquired by the said burglary, knowing it to have been so acquired.

CRIME ESTABLISHED.—Aiding and abetting in the commission of burglary.

Committing Officer—Mr. R. W. Russel, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 27th July 1853.

Remarks by the officiating sessions judge.—This and the following case were thus reported in the statement No. 6, for the month of April 1853, cases Nos. 7 and 9:—

“This and the following case are of burglary, in one of which the prisoners Nos. 4 to 10 were concerned, and in the other only Nos. 4, 5, 6, 7 and 9, but unfortunately those reported to be the leaders, Nos. 4 and 7, escaped from jail a few days before the opening of the sessions.

“It was shown on trial, that the chowkeedar Munce (witness No. 3,) finding the prisoners absent from their houses on the night of 23rd Aghun 1259 (7th December 1852,) called upon some of the neighbours to sit up and watch with him, which they did, and arrested No. 4, and five of the other prisoners who were with him escaped, but he confessed and the property was found, and all the prisoners apprehended.

“Prisoners Nos. 5 and 6 confessed before the darogah, and No. 5 before the joint-magistrate, and the confessions of Nos. 5 and 6 were proved to have been free and voluntary.

“The property was clearly proved to be that stolen from the two houses.

“On both trials, No. 5 pleads, either ignorance of every thing, and denies his confession, but attempts no defence.

“No. 6, in the first trial, brings his father and others to prove the property found to be his, but I discredit the witnesses. On the second trial, he denies and pleads good character, and brings two witnesses, who say they knew him to be respectable in former days, but nothing of him now. No. 9 denies and states in the first trial, that Khoral, who

RUNGPORE. <hr/> Case of NUHURDEE SHEIKH. Prisoner convicted of two charges of burglary, sen- tenced by the sessions judge to ten years' imprisonment. Sentence re- duced to three years' im- prisonment, with reference to C. O. No. 234, dated 30th of Oct. 1846.
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has escaped, gave him the property found, and on the second, that Khoral was angry with him, because he would not take charge of the property and that, therefore, he had the property in his house and implicated him in his confession.

"The same jury in both trials, Ramruttun Lahooree, Isser-chunder Chuckerbutty, Muhibut Alee and Haradhum Sircar, were unanimous in their opinion, and in the first trial returned a verdict of *guilty* against Bazoo and Neeloo on the 1st count, and Ramjan on the 4th count, in the second trial against Bazoo and Neeloo on the 1st count, and Ramjan in the charge preferred against him.

"The other prisoners were only arraigned on the first trial, calendar No. 3, then No. 8 denies and claims the property, and brings his uncle and nephew to prove it, but I was not satisfied.

"No. 10 denies and says the property is his, but was Khoral's (who has escaped.) His four witnesses all declare they knew nothing about the property produced, or whose it is. The jury convict on the 4th count, and I agree.

"The mohurir detained the prisoners an illegal and perfectly unnecessary time at the thannah, to which I drew the joint-magistrate's attention, and since he has informed me that he has punished him, and I also suggested the propriety of the joint-magistrate's recommending the chowkeedar to the superintendent of police for a reward."

The prisoner Nuhurdee had then escaped from jail, but has since been caught. His confessions in both cases as an accomplice were proved before the court, and ample evidence adduced as to the taking him with the property in his possession.

In his defence he pleads *not guilty*, and states he never confessed.

The two witnesses he brings forward to his good character, merely state he was respectable.

The law officer convicts—

In case 17 on count 2nd.

I agree and sentence him to a consolidated sentence of ten (10) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner Nuhurdee Sheikh has been sentenced to a consolidated sentence of ten (10) years' imprisonment, with labor in irons, in two cases of burglary. The conviction in both cases is good.

The prisoner was seized with part of the stolen property in his possession, and confessed both in the mofussil and before the magistrate ; he was committed to the sessions only because another party concerned had been once before con-

victed of burglary, but for this circumstance the magistrate might himself have disposed of the case under Regulation VI. of 1824. In regard to such cases, the attention of the sessions judge is called to Circular Order No. 234, dated 3rd of October 1846, paragraph 2nd. The sentence is much too severe. I reduce it to imprisonment, with labor in irons for three (3) years.

* This order disposes of both cases.

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Case of
NUHURDEE
SHEIKH.

PRESENT:

SIR R. RARLOW, BART., Judge.

GOVERNMENT AND NOBIN GOWALLAH

versus

* KULLIAN BAOREE.

CRIME CHARGED.—Having, on the 7th August 1853, corresponding with 24th Sawun 1260 B. S., at day-time, forcibly committed a rape on Gurobee Chookree, about 10 or 11 years of age, the wife of the prosecutor.

Committing Officer—Mr. A. R. Thompson, officiating joint-magistrate of Bancoorah.*

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 7th November 1853.

Remarks by the sessions judge.—Gurobee Chookree, (witness No. 1,) the violated girl, stated, that she was married to the prosecutor some years ago, but lives apart from him, in the house of her brother, Kaleechurn, in consequence of her tender age; that on the 24th Sawun, or 7th of August last, her brother was unwell, whereupon she was deputed to look after his cows in the jungle; that the witnesses, Mudhoo-soodun Gope and Sonhagee Gwallin, Nos. 2 and 3, were pursuing the same occupation in the same place, but at a little distance off; that at what hour, she cannot recollect, the prisoner came up with his cows, which joined those under her charge, when he repeatedly entreated her to permit him to enjoy her; that she refused and was leaving the jungle with her herd weeping, when he seized her, threw her down and attempted to enter her person; that being unable to do so, he took a small *lattee* or stick, which was in her hand, and after using it, "*ad deobstruendam viam*," to considerable effusion of blood, succeeded in completing his purpose; that her cries had just previously brought up witnesses Nos. 2 and

WEST BURDWAN.

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Case of
KULLIAN
BAOREE.

Prisoner
convicted
of
rape on a girl
of ten years
old, sentenced
to fourteen
years' impris-
onment.

* Mr. Assistant H. A. R. Alexander, in charge of the Munglopore division, took the evidence and defence of the prisoner. Mr. Thompson completed the case on Mr. Alexander's departure to Calcutta, and committed the prisoner.

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Case of
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3, who saw the prisoner lying upon her, in "*flagrante delicto*" and asked him what he was about, whereupon he got up and fled into the jungle ; that the above two witnesses then assisted her home, with the above-mentioned stick in her hand : that she bled a great deal ; that she told her story to her mother, and was attended to by her and Musst. Toosee Baoreeni, the mother of the prisoner, who applied oil, warmth, &c., to the lacerated parts ; that the witnesses, Gooroochurn, Modhoo and Chytun, (Nos. 7, 8 and 9,) saw the operation and heard her story ; that her husband, the prosecutor, was also told when he returned home in the evening ; that next day he went to make his complaint at the thannah, with the bloody clothes and stick of deponent in his hand ; that when he returned, he stated, that he had been abused and told not to make complaint by the mohurir, who had retained the stick ; that a burkundauze (Ruhman Khan, witness No. 10) subsequently came, to whom she repeated the particulars of the offence, when he refused to make any investigation ; that she bled for five or six days, and that she did not recollect how long after the offence complaint was filed in the court of the assistant joint-magistrate at Munglepore.

The deposition of this witness before the assistant magistrate was to the same effect. She is a very intelligent child, suffered much from shame, and seemed to be filled with great indignation against the prisoner. She was acquainted with the nature of the solemn declaration required from deponents, and it was, consequently, dictated to her before she was examined.

That part of the prosecutor's statement, which had reference to the commission of the offence, was, of course, hearsay, but he deposed to the weak and exhausted condition of his wife, the blood on her clothes and stick, and to the strange conduct of the mohurir, Tarachand Hajra, in charge of the thannah of Gouring Dehee, when he went to make his complaint. Comparison of the reports of the mohurir and burkundauze, Ruhman Khan, (witness No. 10,) leave little doubt in my mind of the truth of what prosecutor stated. The mohurir's first report, dated 8th August, set forth, that prosecutor had accused the prisoner of assaulting Gurobee with kicks, clenched fist and *lattice* blows, to the effusion of blood, but made no mention of the bloody cloth, or the stick, which prosecutor affirmed were taken to him by the thannah.

The report of the burkundauze, (witness No. 10,) dated 26th Sawun, or 9th of August, was to the effect, that he had examined Gurobee before Hurree Mundle and other persons of the prosecutor's village of Palloohadehee ; that her clothes were bloody ; that she accused the prisoner of having violated her ; that she affirmed she was still bleeding, but that no marks of

violence were visible in her body or limbs; that she was lying on a bed sick, and that he had told her and the prosecutor to make their complaint at the thannah.

The second report of the mohurir, communicating the above, contained evident symptoms of a desire to get rid of the case, by throwing discredit upon the statements of Gurobee and her husband, for it represented, that the complaint of the latter was for assault, whereas the former alleged rape, as the cause of her state, to the burkundauze; that the violation of a gwallin by a Baoree was improbable, and that the case appeared to be one of which the investigation was inexpedient, without special orders. No allusion was made to the more serious portions of the burkundauze's report. The assistant joint-magistrate ordered, that the prosecutor and Gurobee should be directed to make a formal complaint within a week, if they wished to do so, but the same was not filed until the 25th August, or 18 days after the offence. Prosecutor accounted for this by saying that Gurobee was not well enough to travel, and that the necessary funds could not be collected until that date, and I consider his explanation sufficient.

The evidence of the eye-witnesses, Mudhoosoodun Gope and Sonhagee Gwallin, (Nos. 2 and 3,) fully supported that of Gurobee, but the former prevaricated a little about her clothes and stick. Before the assistant joint-magistrate he said, that the cloth, or clothes, and the stick, were lying on one side, and that he saw no blood on them, though he took up the stick with his own hand and Gurobee had lost a great deal of blood. To the sessions court he affirmed that shame had prevented him from looking and seeing whether the clothes and stick were bloody or not. When cross examined, he repeated that he had seen no blood on the *lattee* and acknowledged that the prisoner's father was outside the cutcherry.

Witness No. 3 did not mention the stick to the assistant joint-magistrate, but distinctly deposed to having seen it and its end marked with blood when examined by the sessions court. She trembled a good deal and seemed much disturbed in mind when cross-examined, but said nothing that could be called discrepant. She might have forgotten to mention the stick, as no particular question was asked regarding it by the assistant joint-magistrate. The prosecutor is the husband of the witness' sister.

It appears to me that the father of the prisoner, or the burkundauze, (witness No. 10,) must have been tampering with both these witnesses, and that their evidence does not discredit the statement of Gurobee, in regard to the use made of the stick by the prisoner.

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The assistant-joint magistrate, Mr. H. A. R. Alexander, did not cause the native doctor to examine the person of Gurobee, as he ought to have done, for what reason does not appear, but the evidence of the two matrons, Rutnee and Rae Baoreens, (witnesses Nos. 4 and 5.) was clear as to penetration and non-puberty, though lapse of ten days had healed any wounds or scratches that might have been inflicted. The evidence of the circumstantial witnesses, Agoremee Gwallin, mother of Gurobee, Gooroochurn Gope, and Modhoo Mundle, (witnesses Nos. 6, 7 and 8,) was descriptive of her state and story, when she reached home, but the two latter affirmed, that they had heard nothing of the stick nor of the use made of it.

The evidence of the burkundauze was a counter-part of his report to the mohurir, above given, but he affirmed that he was in his *baseh*, at the thannah, when the prosecutor came to make his complaint, and had not therefore heard what he said; that the mohurir had ordered him to go and investigate the case, as one of *mar peet*, and that he had heard nothing about any bloody *lattee*.

Muggun Roy, chowkeedar, (witness, No. 11,) who accompanied the prosecutor to the thaunah, acknowledged that he had a bloody stick and cloth with him, but affirmed that he attributed the blood on the stick to contact with the cloth only; that Gurobee had told him that the same was caused by her having clasped it, in coming home, with her blood-stained hands, and that he had seated himself too far off, when at the thannah, to hear what passed between the mohurir and the prosecutor.

When prosecutor was asked whether Gurobee had really made the above communication to the deponent, he said, "Yes, but that the other way in which the stick had become bloody, had been mentioned also."

I think the court will agree with me in perceiving signs of collusion and instruction in the evidence of the above witnesses, attributable to the fact, that the Mohurir Tarachaund's behaviour in this case is now under investigation by the officiating joint-magistrate. The burkundauze and the witnesses ought to have been kept apart, but the mischief had been done before the sessions court could be expected to prevent it.

The prisoner, who pleaded *not guilty*, affirmed that the case had been got up against him by Ram Surn Chuckerbutty, the malik of Palloohadehee, in conjunction with the prosecutor and other gowallahs, whose cows had been pounded by him, for trespassing on certain indigo fields under his charge.

This defence was not substantiated by his witnesses, nor did it appear that there had ever existed any quarrel between the families of the prosecutor and prisoner.

The *futwa* of the law officer convicted the prisoner of rape, on violent presumption, and declared him liable to *tazeer* or discretionary punishment.

I agree in the conviction, but consider the proof full and legal, and therefore, with reference to the cruel and dangerous

Sheikh Goyshoo
versus
Phagoo Jolla.
1850, 27th March, pages
266 and 67.

way in which the deed was done, and the precedent noted in the margin, recommend that Kullian Baoree be sentenced to fourteen (14) years' imprisonment, with labor

in irons in banishment.

The youth of the prisoner appears to me only an aggravation of his crime.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—I fully concur in the conviction of the prisoner and in the sentence which the sessions judge proposes to be passed upon him. The assault was a most brutal one, and merits the enhanced punishment of fourteen (¹⁴) years' imprisonment, with labor and irons in banishment.

1853.

November 30.

Case of
KULLIAN
BAOREE.

SUMMARY CASES.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*GOVERNMENT AND MUNI CHUND CHUNG
versus

KUNHAI CHUNG.

CRIME CHARGED.—1st count, wilful murder of Ramsoon-
der; 2nd count, wounding Redy Kishht, and 3rd count,
arson.

Committing Officer—Mr. W. M. Beaufort, magistrate of
Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge,
on the 3rd October 1853.

Remarks by the sessions judge.—The affair occurred on
the 8th March last year; since then the prisoner has been in
the Dacca insane hospital. Having been lately reported
cured, he has been put upon his trial.

It appears that the prisoner went out of his mind five or six days prior to the commission of the act now laid to his charge. His madness showed itself by his wandering frequently ~~in~~ the jungles and there concealing himself, and from his never speaking to any one who addressed him. On the day of the occurrence, the prosecutor and his father, the deceased, were digging earth out of a tank near their house. The father sent his son, Redy, to fetch a chillum of tobacco, and he was returning with this, when the prisoner followed him, dressed in a *labada*, under which he concealed a sickle. Having reached the place, where the deceased and his two sons were, the prisoner seized the youngest of the sons, and with the sickle inflicted on his head and shoulders six fearful wounds. The father then came up to the son's rescue, when the prisoner felled him to the ground with several blows with the same weapon. The prisoner then ran towards the village, and seizing some fire, he set light to the house of one of the neighbours, by name Kishen Bola, and then arming himself with a fish harpoon, he sallied out on the mydan, intent doubtless upon more mischief, when he was happily at length seized and secured by the witness Omaid Alee and others. The son recovered, but the father died the same day. All this was fully established by the evidence, and the witnesses all agree that the man was deranged.

The law officer finds that the prisoner committed the murder while in a state of insanity, and declares punishment barred on that account.

From the evidence of the witnesses and from the behaviour of the prisoner, before and after he committed the murder,

BACKER-
GUNGE.

1853.

November 4.
Case of
KUNHAI
CHUNG.

Prisoner charged with
wilful murder recommended
for acquittal by the sessions
judge on the ground of insanity, case re-
turned to the judge and pro-
secutor per mode of
procedure pointed out to
him.

1853.

November 4.
Case of
KUNHAI
CHUNG:

there can, I think, be no doubt that he was insane at the time. I consider him entitled to acquittal on that account, but such a character should not be set at large, except under the best security, that he will be kept from committing such frightful acts as those of which he was lately guilty.

Resolution of the Nizamut Adawlut, No. 1265, the dated 4th November 1853.—(Present: Mr. H. T. Raikes.)—The Court, having perused the papers above recorded, and finding that the sessions judge has acquitted Kunhai Chung on the ground of insanity, direct that the proceedings be returned, with instructions to the sessions judge, to order the prisoner to be kept in safe custody until the pleasure of Government shall be known, agreeably to the Circular Order, No. 29, dated the 7th of September 1849, and to submit his report on the case in statement No. 8, as required by the Circular Order, No. 31, of the 28th idem.

PRESENT:

A. J. M. MILLS, Esq., Judge.

GOVERNMENT

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ASSOO.

RUMGORE.

1853.

November 19.

Case of
ASSOO.

Order of the magistrate imposing a fine of 12 rupees annulled at the recommendation of the sessions judge, owing to an error in the identification of the prisoner.

THIS case was referred to the Nizamut Adawlut, under Section V. Act XXXI. of 1841, and Circular Order, dated 18th March 1842, by Mr. W. Bell, sessions judge of zillah Rungpore, on the 30th September 1853, with the following report:—

“With reference to my letter* No. 74, of the 15th July last, and its enclosure, regarding the fine inflicted upon Assoo by the officiating magistrate of Rungpore, I have the honor to inform you, that I have inspected the case.

* Letter No. 74, dated 15th July 1853, from the officiating sessions judge of Rungpore to the Register of the Nizamut Adawlut.

“I beg to submit in original a letter from the officiating magistrate of Rungpore, and as I am not aware of any precedent, I shall feel obliged by your obtaining instructions how I should act. Am I, upon the statement of the magistrate, competent to call for his proceedings and cancel his fine of rupees 25, or am I compelled to report the case to Government for sanction to remit the fine.

“I request you will be good enough to return the enclosed after perusal.”

In answer to the above, the following letter, No. 826, dated the 22nd July 1853, was addressed by the Register of the Nizamut Adawlut to the officiating sessions judge of Rungpore:—

“The Court, having had before them your letter, No. 74, of the 15th instant, direct me to refer you to Section V. Act XXXI. of 1841, under which you may call for the magistrate's proceedings, and, if you think it requisite, submit a report to the Court, for their orders, regarding the fine that has been imposed.”

"It appears a case of murder* was under investigation in the months of May and June, and a witness of the name of Aboo Duffadar was interrogated before the magistrate on the 30th, and released on a *moochulka* of rupees 50 on the 3rd of June. The magistrate requiring his attendance again summoned him through the darogah, who, on 16th June, reported that Aboo Pyke kept within his house, and that it was impossible to send him in, and on the same day chellauned in Aboo Pyke. He was put on security, and his defence for disobedience of orders taken on the 22nd. He stated that he had been ill in his house for a month and never summoned by the magistrate, and therefore denied the disobedience *in toto*. The magistrate rejected his defence and fined him rupees 12. On the 4th of July, he applied to the magistrate for a remission of the fine, as his story was correct. On the 6th the magistrate discovered that his name was Assoo not Aboo, and that his defence was good, inasmuch as he never had been summoned, and he therefore recommended that his fine should be remitted. I agree with the magistrate, that it would be very hard that the man should be punished for what he never did, and as the sum he was mulct (no time of imprisonment is specified in the magistrate's *roobukaree* in failure of payment) is too small to admit of appeal to the sessions, I have no control over the case, beyond submitting the papers for the orders of the Court and recommending the man to its favourable consideration."

Resolution of the Nizamut Adawlut, No. 1288, dated the 19th November 1853.—(Present: Mr. A. J. M. Mills.)—The Court, having perused the papers above recorded, connected with the case of Assoo, annul the order of the officiating magistrate of the 23rd of June last, imposing a fine of rupees 12 upon Assoo, and direct that the amount, if levied, be returned to him.

1853

 November 19.
 Case of
 Assoo.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT AND SHAMATOOLLAH MUNDUL

versus

AKKIL MAHOMED DHOWA (No. 1) AND HARAN.
BAGDEE (No. 2.)

CRIME CHARGED.—Dacoity and plundering property to the amount of rupees 106-13, on the 13th July 1853.

HOOGHLY.

1853.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. C. S. Belli, magistrate of Hooghly. Tried before Mr. J. S. Torrens, sessions judge of Hooghly, on the 10th September 1853.

December 2.

Cae of
AKKIL MA-
HOMED
DHOWA and
another.

Conviction
and sentence
passed by the
sessions judge
in a case of
dacoity affirm-
ed in appeal.

Remarks by the sessions judge.—The prisoners both plead *not guilty*. Akkil Mahomed (No. 1) confessed to the police and before the magistrate. Prosecutor states, that he was awoke by the noise of the dacoits at about $\frac{1}{2}$ past 12. In attempting to escape he was seized by three of them, and that he then recognized prisoner No. 1, Akkil Mahomed, standing near, and the other prisoners parading with the other dacoits. He swears also to the recognition of others, against whom, however, the magistrate did not consider the evidence sufficient. Witnesses Nos. 1 and 2 also swear to the recognition of the two prisoners committed. The plaintiff's deposition at the thannah, according to the reports of the police, was taken on the 14th July in the afternoon, and in this he named the prisoners. The prisoner No. 1 was arrested late in the evening of the 14th, and his confession taken the following morning. In this confession, and before the magistrate, he states that he had been induced to commit the dacoity by the prisoner Haran Bagdee. This confession corresponds with the representations of plaintiff and generally with the evidence of the witnesses to the recognition; and considering that the evidence affords full proof of the guilt of the prisoners, I sentence them to nine (9) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I see no reason to distrust the evidence as to the recognition of the prisoners. One of them, when arrested on that evidence, immediately confessed, and stated that he had been induced by the other to join in the dacoity. The sentence is confirmed.

PRESENT :

SIR R. BARLOW, BART.,
AND
J. DUNBAR, Esq.,

} Judges.

GOVERNMENT

versus

RAMJEEBUN DEB (No. 5) AND DAGARAM DEB
(No. 6.)

MYMEN-
SINGH.

1853.

December 3.

Case of
RAMJEEBUN
DEB and
another

Prisoner
convicted of
the wilful mur-
der of his bro-
ther sentenced
to transporta-
tion for life ;
another pri-
soner convict-
ed as accessory
after the fact
sentenced to
five years' im-
prisonment.

CRIME CHARGED.—No. 5, wilful murder of Needheeram Deb *alias* Needha; No. 6, 1st count, being an accomplice in the above murder; 2nd count, being accessory after the fact of the above murder, and 3rd count, privity to the above crime.

Committing Officer—Mr. C. E. Lance, officiating magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 21st September 1853.

Remarks by the officiating sessions judge.—The prisoners and the deceased were own brothers; No. 6 lived separate, but No. 5 and the deceased together, until Bysakh last, when they separated, but continued to occupy the same premises and had joint shares in the crops on the ground. A few days previous to the deceased's death, he was slightly unwell with cold and fever, and on the morning of the 7th of July last, he was reported by the two prisoners to have been missing since the preceding night, when they began to search for him on that day. Next morning (Monday) witness No. 15, Jamaldeeb Chowkeedar, and the prisoners searched for the deceased, the latter stating that a rope for securing cattle with and a *ghurra* had also disappeared. On the parties coming to a *khal*, called Royhookhalee, the chowkeedar seeing a corpse floating down the stream, desired the prisoners to pull it to the bank, which they did, and found that it was the corpse of the deceased: the hands and feet were tied together with a rope, which was twice tied round the neck, reaching to the waist, where it was also tied twice round, and a *ghurra* attached to it, showing that the body was thus thrown into the river.

Witness No. 12, niece of the prisoners, died before the trial came on, but her evidence before the magistrate, and also that of witness No. 13, wife of prisoner No. 5, and of witness No. 14, his servant, both in the foudary and this court, in the absence of eye-witnesses, is very important to a proper elucidation of the case. I shall therefore give it at length.

Witness No. 12 stated before the magistrate, and No. 13 both before the magistrate and this court, that the deceased and prisoner No. 5 separated in Bysakh last, and made a division of their share of the money and household articles; that they used always to quarrel about money matters, and on the day of the night of the occurrence, they also quarrelled, and in the evening the prisoner taunted him for his neglect in attending to their domestic affairs. On that night, at about 1 or $1\frac{1}{2}$ pukur remaining, the witnesses heard a noise of blows in the deceased's house, and witness No. 12 called out what was the matter, when prisoner No. 5 replied that he was filling up some rat-holes in the floor. Shortly after they heard a scream in the direction of the deceased's house, and witness No. 12 again enquired the cause, to which the prisoner replied that the deceased was calling out from the effects of fever. They then called the deceased, but not receiving any answer from him, came out and saw the prisoner standing outside, near the deceased's door, which was open, and his body lying on the floor (it was moonlight) and a bamboo lying near him. The prisoner, after tying the hands and feet, called witness No. 14, who was his servant and who slept in the cow-house, to come and assist in carrying away the corpse to the river, which he declined to do: the prisoner then called his brother, (prisoner No. 6) who lived near, and they both carried the body away. Next day the prisoners reported that the deceased, a rope and a *ghurra* were missing, and the villagers commenced searching for the deceased, some saying that he must have been taken away by a devil, others that he might have drowned himself, and some that he might have got out and fallen into the river when in a state of delirium from fever. Witness No. 13 further says, that her husband (prisoner No. 5) retired to rest with her, but could not say when he got up, nor assign any reason for his leaving his bed at such an unusual hour unobserved.

Witness No. 14 corroborated the above statement, saying that prisoner No. 5 and deceased quarrelled in the day, and at night he heard a noise of *O mah!* (O mother!) in the direction of the deceased's house. He started up and called out (from the cow-house, where he slept) what was the matter, when prisoner No. 5 said, that the deceased made the noise from the effects of fever, and when he (witness) heard the sound of blows, he was told by No. 5, that he was filling up rat-holes. After that, witnesses Nos. 12 and 13 came out and began to cry, when prisoner told No. 12 (his niece) not to cry, as there was no help for it, but that as soon as the moon had gone down, and it had become dark, he would throw the body away, that

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the prisoner then asked witness to assist him, but he declined and was about to call the villagers, when prisoner threatened him, which prevented him from mentioning the thing to any one. Prisoner after that went and called his brother (prisoner No. 6,) and they both bound the body with the rope used for tying up cattle, slung it on a bamboo, and carried it towards the river side, taking with them a *ghurra*, and next day they gave out that the deceased, the rope and *ghurra* were missing. This witness, as well as witnesses Nos. 12 and 13, say that they suppose, from secrecy with which the body was carried away to the river side without informing any of the villagers, and the story that the prisoners gave out the next morning of the deceased being missing, that there was foul play, and that he was murdered by prisoner No. 5, for although the deceased had been unwell with fever for some days previously, still he was not so ill as to die suddenly.

The chowkidar (witness No. 15) states, that when he asked prisoner No. 5, if he supposed the corpse that was floating down the stream was that of his missing brother, he said "No," but when it was taken out, it was found to be so; that prisoner No. 6 was about to cry, when No. 5 told him to desist, and as they were putting the corpse into the boat, prisoner No. 5, on the pretext of going to answer a call of nature, left the boat and never came back, until he was taken up. This witness testifies to the manner in which the body was tied up with the rope and the *ghurra* that was attached to it.

The evidence of the other witnesses is to the effect, that when they heard that deceased was missing, they went to prisoner No. 5's house ; that they heard of the quarrel, and of the deceased being unwell with fever for some days previously.

The body was sent in to the station in the condition in which it was taken out of the water, and the civil surgeon deposed, that although no marks of violence were observable on the body, owing to the decomposed state in which it reached the station, still the decomposition was more so externally than internally, and he stated that from the state of the heart and the lungs, death was caused by drowning, and not by fever, (though he might have had fever,) for the circulation of the blood and respiration must have been in action at the time of his having been immersed in the water. The lungs were filled with water and blood, and the heart also was filled with coagulated blood, which could not have been the case had the body been immersed in water after death.

Prisoner No. 5 denied the charge throughout, stating before the magistrate, that on the night of Saturday, the 2nd

Sawun, (16th July last,) he and deceased retired to their respective houses at about $1\frac{1}{2}$ puhur, and as deceased was somewhat unwell with fever, he (prisoner) got out at midnight and asked him how he was, to which he replied that he was somewhat better. Next morning he went to see deceased and called him, but he was not to be found, so he and his brother (No. 6) began to search for him, when his corpse was discovered in the river. The police mohurir asked a bribe of rupees 100 from him and ill-treated the females, and delayed to send the corpse into the station. In this court he denied the crime, adding that there was no enmity between him and deceased ; that he was of a loose habit and might have entered into somebody's house, where he was killed for his improper conduct and thrown into the river ; that the mohurir ill-treated him and the members of his family, and asked a bribe of 100 rupees, telling him that he (prisoner) knew who had killed deceased and had taken money to hush up the matter, but if he did not share the money with him (the mohurir,) he would suffer for it.

Prisoner No. 6 stated at the thannah, that prisoner No. 5 went to him at 2 or $2\frac{1}{2}$ dund of the night remaining, saying, deceased was missing, so he went with him to his house, and seeing his body in the compound, he was told by No. 5, that as he used to quarrel with him always, he struck him with a *dareeah* (a kind of bamboo used in separating the straw from the *dhan*.) which killed him ; that he and No. 5 then tied up the body and carried it to the river and threw it in with the *ghurra*, which they attached to the body ; that deceased was not very ill, he had only a slight cold and fever, and he and No. 5 used always to quarrel about money matters, and that on that day also they quarrelled. He repeated this before the magistrate, with this variation, that No. 5 told him that he only gave deceased a slap and he died, but that there were marks of blows of a *lattee* on the body ; that he wanted to inform the villagers, when No. 5 cautioned him not to do so, and he refrained through fear. In this court, however, this prisoner retracted his confessions, saying, that they were extorted by the police mohurir by ill-treatment, and that he did not see the corpse or throw it into the river.

The witnesses, on the part of the prisoners whom they examined, could not exculpate them from the charge ; the only thing they said was, that they did not hear that prisoners killed the deceased.

The law officer in his *futwa* states, that the civil surgeon deposes to death having occurred from drowning, while the evidence of witness No. 13, and the admission of the prisoner No. 6, before the police mohurir and the magistrate,

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show that death occurred before the body was thrown into the river, which contradiction renders the latter evidence and admission suspicious ; and witness No. 14, who seems to have been aware of the whole facts, did not mention them to any one till the arrival of the police, which throws doubts upon the truth of his statement. From the evidence of the other witnesses, it appeared, that the quarrel regarding money between prisoner No. 5 and the deceased only occurred about three months before the occurrence and not afterwards, which contradicts the statements of the witnesses Nos. 13 and 14. Besides, it does not appear that there existed any great enmity between the parties ; it is not probable, therefore, that owing to a quarrel of old standing, the prisoner No. 5 should leave his bed at the dead of night and kill his own brother. Under these circumstances, he returns a verdict of acquittal for the prisoners.

From the above history of the case, it will be seen that prisoner No. 5 and deceased were always in the habit of quarrelling about money matters, and on the very day preceding the night of the murder, there was a dispute. The mouljee would acquit, because the witnesses for the prosecution deposed to the deceased having been dead before the body was taken to the river, but nothing could be more natural than this evidence, as the witnesses had not the opportunity of arriving at any other conclusion from the fact of the deceased not answering when they called out to him, being most probably then insensible, for they could not approach near enough to him, while prisoner No. 5 was standing close by the door, but that life was not then extinct is quite clear from the evidence of the civil assistant surgeon, who deposes to death having been caused by drowning, so that there is the strongest presumption for supposing that prisoner No. 5, when the witnesses called out, had not quite succeeded in completing the murder then, and that the deceased was drowned when insensible, though not dead. The evidence appears to me to be quite consistent throughout. It has been clearly proved, that prisoner No. 5 and the deceased were constantly quarrelling about money matters, and on the very day of the night preceding the murder they had a quarrel. It has also been proved, that the prisoner No. 5 got up at the dead of the night, which he himself admits, (but to enquire, as he says, after the deceased, who was ill of fever,) and that a noise and screams proceeded from the deceased's house and the prisoner was seen standing close by. There is also evidence to show that the deceased was then securely bound with ropes ; that on witness No. 14 declining to assist in carrying away the body to the river, the prison-

er No. 5 called his brother (prisoner No. 6,) and they thus together effected their purpose. The murder, it is to be observed, took place on a Saturday evening, and the body was found in the river on the Monday following, floating down the stream ; it may therefore be asked, whether there was not sufficient time to admit of its being carried down much farther than where it was found, but this is easily accounted for, as the deceased was put into the river with a *ghurra* attached to the waist, which, when filled with water, would keep the body under, until it became swollen, when it would come to the surface again, bringing a much larger weight with it than what the *ghurra* could contain of water. The law officer is wrong in stating, that a quarrel only took place three months before the occurrence, as it has been clearly established that the prisoner No. 5 and the deceased were always in the habit of quarrelling about money matter, and that on the very day of the murder a dispute took place between them, and I have not the least doubt, that it then entered the prisoner's mind to murder the deceased, which would not be difficult to accomplish from his being ill with fever at the time. Dissenting therefore, on the above grounds, from the *futwa* of the law officer, I would convict prisoner No. 5 of the wilful murder of his own brother, Needheeram Deb alias Needha, and prisoner No. 6, of being an accomplice in the above murder, and under all the circumstances recommend that prisoner No. 5 be imprisoned with labor and irons in transportation for life beyond sea, and prisoner No. 6 to fourteen (14) years' imprisonment in banishment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. J. Dunbar.)—*Sir R. Barlow.*—The evidence of Musst. Shurbo Mongola, who was examined on oath before the magistrate, but died before the sessions trial, and that of Musst. Loleeta, wife of the prisoner No. 5, Ramjeebun Deb, supported by the evidence of Brijo Chung, the prisoner's servant, afford the strongest presumption of his guilt. No one actually saw the murder committed, but both the women heard the cries of the deceased, and upon enquiring the cause, were told by the prisoner No. 5 the deceased was suffering from fever. They went to the house and Musst. Loleeta saw the deceased on the floor; went up and called out to him, endeavouring to rouse him, but he made no reply, and she concluded he was dead. Her husband was standing close by and called Brijo, his servant, to assist him in throwing the body away ; he refused, upon which the prisoner called his brother, (No. 6,) and both of them tied the body up by arms and legs and carried it off with an earthen pot to the river close by,

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whence it was produced with the earthen pot filled and attached to it. Frequent quarrels used to occur between the deceased and his brother (No. 5,) and on the very day of the murder they had disputes about some money.

Prisoner No. 6 confessed in the mofussil and before the magistrate to having assisted in throwing the corpse into the river, and it is clear from the evidence for the prosecution, that he took no further part than that which he admits.

I would confirm the sentence proposed by the sessions judge to be passed on the prisoner No. 5, convicting him on violent presumption of the murder of his brother Nedheeram.

I also convict No. 6, whose offence amounts to accessoryship after the fact, and sentence him to five (5) years' imprisonment with irons and labor.

Mr. J. Dunbar.—The law officer discredits the evidence, because the medical officer says, life could not have been extinct, when the body was put into the water; the only inference to be drawn from the opinion of the medical officer is, that the body was actually thrown into the river before life was extinct, for it is quite out of the question that the deceased should himself have tied the ropes round his body in the way described. I concur in convicting prisoner No. 5 on violent presumption of the murder, and No. 6 of accessoryship after the fact. I concur also in the sentence proposed by Sir R. Barlow.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT AND KUNHYE SINGII
versus

MULOOAK (No. 4,) BOWDHA (No. 5,) RAMSUHYE (No. 6,) DUREO (No. 7,) AND WUZEER (No. 8, APPELLANT.)

PATNA.

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Case of
WUZEER and
others.

CRIME CHARGED.—1st count, theft of property valued at rupees 982-6, from the house of Rasbeharry Lal, and 2nd count, receiving and having property acquired by the above-mentioned theft, knowing the same to have been so acquired.

CRIME ESTABLISHED.—Against prisoners Nos. 4 and 5, theft of property valued at rupees 982-6, from the house of Rasbeharry Lal. Against prisoners Nos. 6, 7 and 8, receiving and having property acquired by the theft, knowing the same to have been so acquired.

Committing Officer—*Mr. W. Ainslie, magistrate of Patna.*

Tried before *Mr. B. J. Colvin, officiating commissioner, with the powers of a sessions judge, on the 5th of August 1853.*

Conviction and sentence in a case of theft and receiving stolen property affirmed in appeal.

Remarks by the officiating commissioner.—The theft charged took place on the night of Saturday, the 23rd June, when the *toshakhana* of Rasbeharry Lal, the prosecutor Kunhye Singh's master, which was under the charge of prisoner No. 4, was robbed, and property to the amount of rupees 982-6 taken away. On the Sunday morning the occurrence of the theft was known and reported that day at the thannah. Next day nothing was done; but on Tuesday, Rasbeharry Lal taxed prisoner No. 4 with the theft, or knowing something about it. He denied, but mentioned that prisoners Nos. 5, 6, 7 and 8 had some days before proposed the theft to him. He was thereupon made over to a burkundauze stationed in the village, to whom he stated that the theft had been committed and a portion of the property put in his house by the above prisoners. Rupees 306 and a gold chain, worth rupees 252, were taken out of his house. Prisoner No. 5 also allowed that he had a portion of the property in his house, when not only rupees 105-4 were found in it, but he also next day pointed out where the box, which had contained the property, was concealed in the bed of a river. Information being sent to the thannah, the darogah came the next day, and searching the houses of Nos. 6, 7, 8 and 9, certain articles of property, stated to belong to the prosecutor, were found in them.

Prisoners Nos. 4, 5, 6 and 7 are the servants, either of the prosecutor's master or of his relatives. No. 8 is resident of the village.

The answers of Nos. 4 and 5, both in the mofussil and before the magistrate, which have been acknowledged by them before me, are *quasi* confessions of guilt, but no regard can be paid to the former, as they were elicited by promises of pardon made by the burkundauze. Those before the magistrate, although proved to have been free and voluntary, do not acknowledge the commission of the theft, but only having stolen property in possession—No. 4 saying, that it had been put in his house by the others, and No. 5, that he had received what was found in his as his share of the plunder. Prisoners Nos. 6, 7 and 8 deny the charges.

Two pair of *pyjamas* were found in the house of Nos. 6 and 7, which are claimed by them, but they are sufficiently proved to belong to the prosecutor.

The proof against No. 8 is the finding of a Mahomedshye gold-mohur in his house. The prosecutor, on the morning succeeding the theft, did not enter gold-mohurs in the list sent with the report of its occurrence, but in a list presented on the 29th June, when the darogah came, and before search was made, five* were inserted having been stolen.

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Case of
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* Four Kuldar, and one Mahomedshye.

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WUZER and
others.

The prosecutor's witnesses depose to its being his, while the prisoner claims it as his own. The place where he acknowledges it was found, was a very suspicious place for its being kept in.

The law officer convicts Nos. 4 and 5 of the theft. In this I concur. I agree with him also in convicting Nos. 6, 7 and 8 of the 2nd count.

In consideration of No. 4 being servant of the prosecutor, I have sentenced him to seven (7) years' imprisonment and to two (2) years more in lieu of stripes, altogether nine (9) years, with labor and irons in banishment. I have sentenced No. 5 to seven (7) years' imprisonment, with labor and irons in banishment, and Nos. 6, 7 and 8, each to two (2) years' imprisonment and one (1) year in lieu of stripes, with labor and irons.

N. B. This case has been before the Nizamut Adawlut, see sentence of the 31st of August last, in the remarks accompanying which their conviction was upheld.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The Court see no reason to interfere; the prisoner is implicated by the confessing prisoners, and the gold-mohur was found in a heap of chaff; he says it must have been left there by a child who had it to play with, but this is extremely unlikely; there can be little doubt that it was purposely hidden there. The sentence is confirmed.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND RAMCOOMAR CHUCKER-BUTTY
versus

MOKIM SIRDAR (No. 1,) AKOOBDIE SHEIKH (No. 2,) EMAMDEE SIRDAR (No. 3,) SONAI SIRDAR (No. 4,) ANUND SHEIKH (No. 5,) MANOOLLAH SHEIKH (No. 6,) EKIN GOLDAR (No. 7,) KAORAH TAKEER (No. 8,) MADAREEF GAZEE (No. 9,) RAM-CHUNDER MOOKERJEA (No. 10, APPELLANT,) AND OOMAKANT CHUCKERBUTTY (No. 11.)

CRIME CHARGED.—Nos. 1 to 9, 1st count, dacoity in the dwelling-house of the prosecutor, Ramcoomar Chuckerbatty; 2nd count, accomplices in the said charge; No. 9, 3rd count, accessory before the fact. Nos. 10 and 11, 1st count, accessory after the fact, and 2nd count, privity to the said dacoity.

CRIME ESTABLISHED.—Nos. 1 to 8, dacoity in the house of Ramcoomar Chuckerbatty; No. 9, accessory before the fact of the dacoity, and Nos. 10 and 11, knowingly concealing a dacoity committed in the house of Ramcoomar Chuckerbatty.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 24th December 1852.

Remarks by the sessions judge.—This is an extraordinary case. The prisoners, by the proved confessions of some of them and by the evidence of the witnesses, met together and then proceeded to attack the house of the prosecutor.

They effected an entrance on the premises, but before they could carry out their object, the villagers rose against them, and began to make a noise, which disturbed them, and they commenced a retreat. The only way they had of making their retreat was through a narrow passage, at the end of which a brave up-country native, a birjbasee, stood with a drawn sword, and as each man appeared, he took a well-aimed blow at him, and maimed several of them.

Six only have been seized, some of whom confessed in the mofussil and also before the magistrate.

Independent of their confessions, the evidence of the eye-witnesses, who were standing close behind the birjbasee, while he was manfully inflicting his well-aimed cuts, could, by the bright moonlight, on the night of the occurrence, distinctly recognize each man. I saw the wounded men in the hospital

NUDDEA.

1853.

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Case of
RAMCHUN-
DER MOOKER-
JEA AND
OTHERS.

Conviction
and sentence
in a case of
dacoity upheld
in appeal, al-
though the lo-
cal police had
at first endeav-
oured to con-
ceal the occur-
rence.

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Case of
 RAMCHUN-
 BER MOOKER-
 JEA and
 others. —

soon after they were sent in, and the wounds were so severe, that it was doubtful if the men would live to stand their trial.

The darogah and mohurir of the thannah of Ragbzupoor-khurriah were proved to have got intimation of the occurrence, and to have knowingly concealed it by falsifying some of the reports, and forwarding reports to the magistrate which were contrary to the truth.

Five burkundauzes, when they found that their superior police officers were determined to bury the case altogether, sent in a statement to the magistrate, which induced him to depute the darogah of another thannah to make investigations, and then the whole story came out.

Sentence passed by the lower court.—Nos. 1 to 8, seven (7) years' imprisonment each, with labor in irons; No. 9, to three (3) years' ditto, and Nos 10 and 11, to pay a fine of rupees 100 each; in default of payment to six months' imprisonment each, without labor and irons, or until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—I have gone over the case carefully on the petition of the ex-darogah. I see no reason to differ with the sessions judge as to his finding in respect to him. The depositions of the five burkundauzes, that of Raichurn Bhudder, gomash-tah, who utterly repudiates the report which the darogah submitted as his, and the other circumstantial evidence detailed in the magistrate's calendar, afford strong presumption that the darogah did not do his duty in this case.

The appeal is dismissed.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT

versus

BHOLANATH KUR.

CRIME CHARGED.—1st count, embezzlement (under Act XIII. of 1850,) in having, while employed as salt darogah at chowkee Jamburree, received, according to No. 35, ruhadaree pass, by reason of that employment, 434 maunds 10 seers of salt, worth rupees 1,302-12 knowingly and fraudulently having taken the above salt and embezzled it by applying it to his own advantage; 2nd count, theft (under Act XIII. of 1850,) in having, while employed as salt darogah at chowkee Jamburree received, according to No. 35, ruhadaree pass, 434 maunds 10 seers of salt, worth rupees 1,302-12, belonging to Government, and without crediting it in the papers belonging to Government, having feloniously stolen and sold it to his own advantage.

CRIME ESTABLISHED.—Theft, under Act XIII. of 1850.

Committing Officer—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 5th August 1853.

Remarks by the sessions judge.—It appears, that in the month of March last, the witness No. 1, Mr. H. J. Bamber, was deputed by the controller of salt chowkies to examine the retail salt golahs in the Jellasore division. Accordingly, on or about the 18th of March last, he visited the chowkee Jamburree, of which the prisoner was then the darogah. Witness then learnt, that in the previous month of February, the prisoner had received from the Ramnuggur salt golahs at Hidgellee 450 maunds of salt, of which there were no traces either in the accounts or in the golah under his charge. On witness requiring the darogah to explain, he stated that he had never received that quantity and knew nothing about it. On the 6th May, however, when called on to explain what had become of the salt, he presented a petition to the witness, acknowledging that the salt, 434 maunds 10 seers, had reached his chowkee in the month of February 1853; that he had given a receipt for the same, but that as it was not recovered by a regular ruhadaree pass, it had not been entered in the accounts; that he (prisoner) hearing that the witness was about to visit all the chowkees on the Jellasore, and knowing that he (prisoner) could not account for the 434 maunds 10 seers in his possession, he sold it to various parties in the neighbourhood. He

MIDNAPORE.

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Case of
BHOLANATH
KUR.

The prisoner, a salt darogah, was convicted of embezzling (*i. e.* of theft under Act XIII. of 1850) salt committed to his charge, and sentenced to five years' imprisonment.

Appeal rejected.

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KUR.

added that he was willing to make good its equivalent in money, rupees 1,350, at the same time paid in a portion of the amount, *viz.* company's rupees 700. On the 11th May, he repeated his confessions before the said witness and promised to pay the other instalment of the rupees 1,350, which promise he subsequently fulfilled. These confessions are verified by the witness No. 1, Mr. Bamber, witness No. 2, Jugut Deshur, serishtadar, and Kylaschunder, the mohurir. The confessions are also corroborated by the evidence of the witnesses Nos. 3 and 5, who were present when the prisoner received 434 maunds 10 seers of salt from the witness No. 9, Mudhoo Aytch, and gave a receipt for the same to the latter—by that of witness No. 9, who conveyed the salt to chowkee Jamburree from Ramnuggur and made it over to the prisoner, from whom he obtained the receipt marked D. The prisoner pleads *not guilty* and that the confessions were extorted from him by promises and threats, of this, however, he adduces no proof whatever. He cites several witnesses, who state, that one Judoonath Sett, a subordinate officer of the superintendent's office, urged him (the prisoner,) as a means of saving himself the consequences of stealing the salt, to make good its value to the superintendent, but they do not impugn the confessions or corroborate in any way what the prisoner alleges, that they were extorted from him. The salt which the prisoner made away with was, according to the evidence, a portion of 1,071 maunds, consigned under a ruhadaree pass, from the agent at Hidgellee to the golah at Gopeebullubpore, whilst in transit; and before reaching its destination, the contractor, or some other subordinate officer of the Jellasore superintendency, who of course had an object in view, directed the witness Mudhoo Aytch (No. 9) to take the quantity of salt, of which he had charge, *viz.* 450 maunds, to the golah at Jamburree, which was in charge of the prisoner. The salt, when it reached Jamburree, unprotected by any pass, was in fact contraband, and the darogah in receiving and making away with it, without bringing it to the credit of Government, was guilty of theft, and of the second charge in the indictment, according to the provisions of Section IV. Act XIII. of 1850. The assessors declare the prisoner guilty of the above charge, and the court coinciding in this verdict, the prisoner is sentenced as indicated in the statement.

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoner has appealed on the single ground, that the confession before the superintendent of salt chowkies was extorted from him. Independent of the confession, there

is ample proof against the prisoner, and moreover there is no evidence to the confession having been obtained by improper means. I see no reason to interfere with the sentence and conviction, and reject the appeal.

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PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND OTHERS

versus

GUREEB (No. 1), **MUNGUR** (No. 2,) **LEDOORA** (No. 3,) **BOOKUN** (No. 4,) **JEETUN** (No. 5,) **METHOO** (No. 6,) **JUMNEE** (No. 7,) **GOGNA** (No. 8,) **SUNGRA** (No. 9,) **JUGURNATH** (No. 10,) **DEENA** (No. 11,) **MEGHUN** (No. 12,) **NUNKA** (No. 13,) **BHEEKUN** (No. 14,) **BHEECHOOK** (No. 15,) **DEO SAHIE** (No. 16,) **SONOO** (No. 17,) **MOCHUN** (No. 18,) **KAILA** (No. 19,) **NANHOO** (No. 20,) **GUNPUT** (No. 21,) **SOMRA** (No. 22,) **SONOOA** (No. 23,) **DUMURA** (No. 24,) **KHOOBEEA** (No. 25,) **MUGUN** (No. 26,) **GOOMAN** (No. 27,) **DHEENOO** (No. 28,) **CHUMROO** (No. 29,) **BEER SOHOY** (No. 30,) **BOODHOO** (No. 31,) **KURMA** (No. 32,) **LUCHUN** (No. 33,) **SOOKUR** (No. 34,) **KULHA** (No. 35,) **GOOMAN 2ND** (No. 36,) **MOOTOR** (No. 37,) **DHEBRA** (No. 38,) **DHURUM** (No. 39,) **BOODHOO 2ND** (No. 40,) **KOKILYTA** (No. 41,) **BOODHIA** (No. 42,) **LULLOOA** (No. 43,) **BUNDHOOA** (No. 44,) **SOONOA 2ND** (No. 45,) **JETTOO** (No. 46,) **PURAN** (No. 47,) **MUNGRA** (No. 48,) **DHUNOOA** (No. 49,) **SOONOA 3RD** (No. 50,) **AND PULTUNEAA** (No. 51.)

CRIME CHARGED.—Prisoners Nos. 1 to 50, dacoity with torture and plunder of property, valued rupees 1,181-11, and prisoner No. 51, accessory to the crime after the fact.

CRIME ESTABLISHED.—Prisoners Nos. 1 to 50, dacoity with torture and plunder of property valued rupees 1,181-11, and No. 51, being accessory to the crime after the fact.

Committing Officer—Captain W. H. Oakes, principal assistant of Lohurdugga.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 30th June 1853.

Remarks by the deputy commissioner.—The prosecutor's house was entered and robbed by a large gang of men on the night of the 6th March. The prosecutor states, that he was beaten, but not severely, and a drop of oil from a torch was put on the breast of a female servant to induce her to show the property. This woman appeared as a witness and showed a mark

HAZAREE-
BAUGH.

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Case of
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others.

Conviction
and sentence
passed by the
deputy com-
missioner in a
case of dacoity
with torture
affirmed, with
a trifling alter-
ation, in ap-
peal.

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which might have been so caused. It is about the size of a shilling. The quantity of property plundered was considerable. None of the robbers were recognized at the time, neither have any of the prisoners been identified by the witnesses to the fact. After some inquiry had been made, one Kunhya Kutwar stated, that he had been told of a body of men having been seen proceeding through the jungles to the westward, and this raised a suspicion that the gang had come from the east. The prosecutor then caused one Nunka Pahan, who was well acquainted with the eastern parts of the district, to be summoned, and this Nunka informed the darogah, that on the day of the dacoity, the prisoner Gureeb had asked him for some fire, and that Gureeb lived in Kole, about 50 miles from the prosecutor's village. The darogah at once proceeded to Kole, where the prisoner Gureeb being taken up on the 9th March, confessed, naming the prisoners Nos. 2, 16, 24 and 25. The prisoner Mungur (No. 2) named many others, and in this way the prisoners Nos. 1 to 50, were traced out, and all confessed, and (excepting Nos. 30, 39, 48, 49 and 50) their houses being searched, property was found, or in some instances voluntarily given up by the prisoners. No. 51 confessed privity after the fact only. Before the principal assistant, the prisoners Nos. 1 to 23 retracted their confessions, and Nos. 24 to 51 repeated them. Before this court, the confessions and the finding of the property were duly attested. The prisoners in this court pleaded *not guilty*, but made no sufficient defence, though they summoned no less than 108 witnesses. The jury found all the prisoners guilty as charged, and after a careful examination, I find nothing to throw a doubt on the confessions and destroying of property. I therefore concur with the jury in finding all the prisoners guilty, Nos. 1 to 50 of dacoity with slightly aggravating circumstances, but as to No. 51, I find him guilty of privity after the fact only. Some of the prisoners are young, namely, Nos. 7, 8, 9, 10, 13, 35, 37 and 38, who all appear to be not above 18 years of age. To these, I am willing to show such leniency as may not be inconsistent with the magnitude of the crime, in which they have been concerned. The prisoners have therefore been sentenced as shown; on the whole, with some severity perhaps, but the crime which has not hitherto been common in this (Lohurdugga) district requires to be repressed.

Sentence passed by the lower court.—Prisoners Nos. 1 to 6 and 11 and 12 and 14 to 34 and 36 and 39 to 50, to be imprisoned with labor and irons for nine (9) years each, and prisoners Nos. 7 to 10 and 13 and 35, 37 and 38, to be imprisoned with labor and irons for five (5) years each, and No. 51 to be imprisoned without irons for three (3) years.

and to pay a fine of rupees 50; in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—There are, in this case, in all 51 prisoners, of whom 23 only have appealed. These men having confessed in the mofussil, retracted their confessions before the principal assistant, alleging that they had not confessed, and that they had been maltreated by the police. While, however, proof is adduced to the entirely voluntary character of the confessions, the prisoners have been unable to bring forward any evidence in support of their plea. The evidence for the prosecution is such as to satisfy the deputy commissioner and the jury, with whose aid he tried the case, and I can find nothing in the record which should induce me to question the correctness of their conclusions. I accordingly confirm the sentence, convicting No. 51 of privity after the fact, and all the others of dacoity with ill-usage. The vigour and activity with which the darogah followed up the dacoits, when once he had got the clue, are deserving of commendation.

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GUREEB and
others.

PRESENT:

A. J. M. MILLS, Esq., Judge.

GOVERNMENT AND GOOL MAHOMED MUNDUL
versus

PHOOL MAHOMED NUSHA (No. 11) AND PULANOO
NUSHA (No. 12, APPELLANT.)

CRIME CHARGED.—1st count, burglary attended with wounding; 2nd count, accomplices aiding and abetting in the commission of the said crime, and 3rd count, having in their possession property acquired by the said burglary, knowing it to have been so acquired.

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CRIME ESTABLISHED.—Prisoner No. 11, burglary attended with wounding; prisoner No. 12, being accomplice, aiding and abetting in the commission of the above crime.

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Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

December 6.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 20th July 1853.

Case of
PULANOO NU-
SHA.

Remarks by the officiating sessions judge.—From the evidence adduced on the trial, it is shown that the prosecutor, after his usual meal, had gone to sleep on the night in question, when he was suddenly roused by the crying of his child, a boy of about 5 or 6 years old. He started up and found his house had been broken into, and saw a man trying to escape, but succeeded in arresting him, and alarming Het Mahomed,

Prisoner
convicted as
an accomplice
in burglary
with wound-
ing, sentenced
to five years'
imprisonment.
Appeal reject-
ed.

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Case of
PULANOO NU-
SHA.

another person was caught waiting outside, close to the hole, with two ploughs and a *koran* in his possession ; they turned out to be the prisoners Phool Mahomed (No. 11,) having in his possession a knife and a *dhotee* of the prosecutor's, and Pulanoo (No. 12,) with the ploughs and *koren*. The prosecutor's child had been slightly wounded in attempting to cut off his necklace (which made the joint-magistrate commit the case.) The neighbours were all roused and confirm the story in all its particulars.

The prisoner No. 11, Phool Mahomed, confessed before the darogah and joint-magistrate, and the confessions are proved by the attesting witnesses to have been free and voluntary.

Both the prisoners plead *not guilty*, and state they were seized by the prosecutor and his people and were called thieves, and the property forced on them, and No. 11 was humbugged into confessing on a promise of release. Their story is not established by their witnesses and no doubt remains on my mind of their guilt.

The law officer finds them *guilty*, viz. Phool Mahomed on the 1st count, and Pulanoo on the 2nd count, and agreeing, I sentence accordingly.

Sentence passed by the lower court.—Imprisonment, with labor and irons, for five (5) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoner Pulanoo has appealed, urging that the prosecutor had falsely accused him in revenge, for his having given evidence against him in a case of dacoity in which he was implicated. This plea was not brought forward at the trial and is therefore inadmissible. He does not deny that he was apprehended at night within the enclosure of the prosecutor's house, and he has not attempted to account for the circumstance. The proof against him is complete. I confirm the conviction and sentence and reject the appeal.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT AND GUNESH DOME
*versus*PUTTEERAM BAGDEE (No. 1) AND BHUGGEE
BAGDINEE (No. 2.)

CRIME CHARGED.—Accessaries after the fact, in receiving into their possession, and subsequently transferring to one Degumberee, a silver chain, knowing it to have been acquired in a dacoity committed in the house of the prosecutor Gunesh Dome, on the night of the 1st May 1853.

CRIME ESTABLISHED.—Receiving stolen property, knowing it to have been acquired by dacoity.

Committing Officer—Mr. Edward Jenkins, magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 18th July 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed for being accessaries after the fact, in receiving and committing to the charge of one Degumberee a silver chain, knowing it to have been acquired by dacoity. This dacoity appears to have taken place on the 1st of May last, when the house of the prosecutor, Gunesh Dome, was plundered of sundry property, the silver chain included. Strong suspicions rested on the prisoner Putteeram Bagdee and his brother, Huree Bagdee, but the evidence seems to have been insufficient to induce their committal on the original charge. On the information of one of the witnesses for the prosecution, Sumbhoo Bagdee, who I strongly suspect was concerned in the perpetration of the dacoity, the silver chain was traced. He said that Huree Bagdee told him that he had got it as part of the booty and communicated the intelligence to the darogah, who at once repaired to Huree's house for the purpose of searching it. Huree and his brother, Putteeram, were absent from home when the darogah arrived, but their mother, the prisoner Bhuggee Bagdinee, who lives with them, was there and promised to give up the chain on its being authoritatively demanded by the darogah. With this view she went to the house of the said Degumberee, accompanied by the darogah, and demanded the restitution of the article. Degumberee affirmed that her husband had taken it from her and was very angry with her for having consented to keep it for the prisoner Bhuggee, and her husband, on being called, produced the chain from the thatch of his house, where he had concealed it, admitting that he had taken it from his wife and rebuked her for her incautious conduct in

24-PERGUNNAHS.

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Case of
PUTTEERAM
BAGDEE and
another.

Prisoners convicted of receiving stolen property, sentenced to seven years' imprisonment. Appeal rejected.

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Case of
PUTTEERAM
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another.

receiving and retaining it. The identity of the chain was duly proved in the trial, as also the occurrence of the dacoity and mofussil confessions of the prisoners. The prisoner Putteeram Bagdee pleads that he purchased the chain from the witness Sunibhoo, and the prisoner Bhuggee Bagdinee that she bears an unimpeachable character, and both cite witnesses to defence, but these parties severally profess a profound ignorance of the pleas set up by the prisoners.

Sentence passed by the lower court.—To be imprisoned for seven (7) years each—prisoner No. 1 with labor and irons, and prisoner No. 2 with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The chain was stolen, and the prisoner Putteeram (No. 1) admits possession of it, but alleges he acquired it innocently by purchase from the person who informed against him. The prisoner Bhuggee Bagdinee (No. 2) is proved to have taken the darogah to the person in whose custody she placed the chain and with whom it was found.

It is not likely the prisoners would have left the chain with others, if honestly acquired, and as they have failed to prove their own story, I concur in their conviction and confirm the sentence passed upon them.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT AND NOBOO MANJEE
versus

MAHOMED AMEER JEMADAR (No. 2) AND SHEIKH
SHAJOWAL (No. 3.)

SYLHET.

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December 7.

Case of
MAHOMED
AMEER JE-
MADAR and
another.

Conviction
and sentence
passed in a
case of high-
way robbery,
upheld in ap-
peal.

CRIME CHARGED.—1st count, ordering the commission of a highway robbery; 2nd count, committing a highway robbery on the prosecutor Noboo Manjee of property valued at 10 annas, and 3rd count, knowingly having in their possession property obtained by highway robbery.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer—Mr. J. S. Spankie, joint-magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 24th August 1853.

Remarks by the sessions judge.—The prisoners were on board a Government guard-boat, attached to the thannah Bajitpore, in the district of Mymensingh, and falling in with the prosecutor's boat at Luckhye, in this zillah, demanded from him some wheat and gram. This he refused to give, and the prisoner Aineer and the men of the guard-boat boarded the prosecutor's

boat, and beat him and forcibly carried away about 10 or 15 seers of wheat.

The collector of the district happened to be near the spot, and the prosecutor having made his complaint to some of his amlahs, the buxee gave a thannah burkundauze, who was on the spot, the aid of his peadahs, and the guard-boat was pursued and brought back. On the pursuit being discovered, the vessel containing the wheat was thrown over-board from the guard-boat and was picked by the prosecutor before it sunk. The prisoners in their defence deny the robbery and assert that their boat came in contact with that of the prosecutor, that the crews quarrelled, and a false charge was the result. Before the magistrate's court they called seven witnesses to prove their defence. Four denied all knowledge of the matter whatsoever, while the other three deposed to the truth of it, but they are not worthy of any credit in the face of the evidence for the prosecution, which is unusually trustworthy.

The assessors find the prisoners *guilty* of highway robbery, and in this verdict I concur, and I consider the guilt of the prisoner Mahomed Ameer to be enhanced by the fact, that the boat in which he was is maintained by Government for the prevention of the very crime of which he has been found *guilty*. Considering the burkundauze to have acted under the orders of his superior I have awarded to him a lesser punishment than I should otherwise have done.

Sentence passed by the lower court.—No. 2 to seven (7) years' imprisonment, with labor in irons, and No. 3 to three (3) years' ditto as above.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The circumstances detailed by the sessions judge, in his remarks on the trial of this case, are fully proved by the evidence.

I see no reason to interfere with the sentence passed on the prisoners.

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Case of
MAHOMED
AMEER JE-
MADAR and
another.

PRESENT :
 J. DUNBAR, Esq., }
 AND } Judges.
 H. T. RAIKES, Esq., }

GOVERNMENT AND POOKRAJ SINGH BHABUN
versus

BHOOPNARAIN KAYET (No. 9,) TOOFANEE SINGH
 BHABUN (No. 10,) AND SHEIKH INAYUT HUS-
 SEIN (No. 11.)

BEHAR.

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Case of
 BHOOPNA-
 RAIN KAYET
 and others.

Two prisoners convicted, one as principal, the other as an accomplice, in forgery of a *mookhtarnamah* sentenced respectively to five years and three years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Prisoner No. 9, 1st count, forgery, and having forged a false and fabricated *mookhtarnamah*, dated 1st October 1852, in his own name, on behalf of Pookraj Singh, for himself and Resal Singh, in the case of Sheeo Suhai and Kumulaput *versus* Toofanee Singh; 2nd count, fraudulently uttering and publishing as true the aforesaid forged document in the court of the deputy magistrate of Nowada, on the 1st October 1852, knowing the same to be false and fabricated. Prisoners Nos. 10 and 11, 1st count, forgery, and having forged a false and fabricated *mookhtarnamah*, dated 1st October 1852, in the name of Bhoopnarin Mookhtar, on behalf of Pookraj Singh, for himself and Resal Singh, in the case of Sheeo Suhai and Kumulaput *versus* Toofanee Singh; 2nd count, fraudulently uttering and publishing as true the aforesaid forged document in the court of the deputy magistrate of Nowada on the 1st of October 1852, knowing the same to be false and fabricated.

Committing Officer—Mr. A. G. Wilson, deputy magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 20th July 1853.

Remarks by the sessions judge.—Baboo Bhurut Singh, Resal Singh (witness No. 11) and Gunesh Singh (witness No. 12) were three brothers, living at Doomrawan, as an undivided Hindoo family, holding property in common, and whose affairs in court were managed by Bhurut Singh, and on his decease by his son, Toofanee Singh (prisoner No. 10.)

An Act IV. of 1840 suit was pending in the deputy magistrate of Nowada's court between Sheeo Suhai and Kumulaput, maliks of Roopow, on one side, and Toofanee Singh, Resal and his son, Pookraj Singh, on the other, as maliks of Dhunawan, relative to a water-course, which was defended by Toofanee Singh on his own behalf, through his mookhtar, Inayut Hussein (prisoner No. 14,) and appearance made for Resal and Pookraj Singh by Bhoopnarin Mookhtar (prisoner No. 9) under the *mookhtarnamah*, the subject-matter of trial, authorizing disclaimer on their part to all title in Dhunawan, which belonged to

Toofanee Singh, the real holder (*assal ilaqadar*), and conformably to which the suit was decided by the deputy magistrate on 2nd November 1852, mention therein being duly made of such disclaimer. On the 28th idem, Pookraj petitioned the deputy magistrate, complaining that the *mookhtarnamah* was a forgery. The deputy magistrate, by his proceedings of 7th December 1852, referring to the decision already passed by him on the 22nd November previous, and being of opinion that the disclaimer had been fictitiously got up by Toofanee Singh through Bhoopnarain and Inayut Hussein, passed orders prohibiting these mookhtars from practising in his court. The Act of IV. 1840 suit on Sheeo Suhai and Kumulaput's appeal, and the deputy magistrate's proceedings of 7th of December on Pookraj Inayut Hussein's appeal, came before this court, when being remanded for re-trial, the deputy magistrate finally disposed of Pookraj's complaint by the commitment now under trial.

This *mookhtarnamah*, purports to have been verified in the deputy magistrate's court by its two subscribing witnesses, *viz.* one Kooer Muhto and the other Sookhun Khandoo, and to have been signed by Pookraj Singh for himself and Resal Singh. These two witnesses have never been forthcoming. Witnesses Nos. 1, 2, 3, 11, 12, and Chumunlal (No. 54,) the family dewan, depose that the signature of Pookraj is not in his, but Toofanee Singh's hand-writing; also, that no such person as Kooer Muhto is known, and that Sookhun Khandoo was Toofanee Singh's personal attendant.

During the deputy magistrate's original investigation, Bhoopnarain, in his defence (No. 6 of 7th December,) excused himself for having accepted the *mookhtarnamah* at Toofanee Singh's hands, instead of the real client Pookraj, consequent on Toofanee Singh's explanation, supported by decree of court, maintaining a similar disclaimer, and which Toofanee Singh followed up nearly three months afterwards* by claiming Dhu-nawan as his sole right, acquired by his father Bhurut Singh, and disclaimed by Resal and Gunesh, under the principal sudder ameen's decree, 28th November 1843, No. 51. The uncles stated, that until the discovery of the forgery under trial, they had remained in total ignorance of any such decree. They were simple countrymen, who never attended the courts, but looked after the villages, whilst Bhurut Singh and Toofanee Singh had solely managed the family affairs in court; that the family was as yet, according to Hindu usage, a joint undivided one, living together and holding property in common. To such effect the uncles themselves, (Nos. 11 and 12,) depose, supported by the witnesses, Nos. 1, 2, 3, 5, 6 and 7, and Chumunlal

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* His defence before deputy magistrate, 1st of March 1853, No. 37; his petition, 19th April 1853, No. 95.

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(No. 54,) the family dewan. Pookraj and Gunesh have also filed original documents possessed by them as the village managers, too many to detail, but amongst them the original title-deed, the revenue sale bill purchase of Dhunawan, dated 26th of December 1852, in *Bhurut Singh's name*. In further exculpation of himself, on 7th December last, Bhoopnarain also stated, that the night previous, Toofanee, Pookraj and Gunesh had met at Inayut Hussein's house, and had an *ikrarnamah* or deed of adjustment and acknowledgment between themselves drawn up by Dost Alee Mookhtar (witness No. 4.) On the deputy magistrate's at once questioning Pookraj thereon (No. 2,) he acknowledged that such was the case, and added that the deed was incomplete, requiring to be witnessed. As the matter ended at that time before the deputy magistrate, by Bhoopnarain's dismissal on the same date, this incomplete deed was not then produced, but subsequently in appeal by Pookraj Singh. The circumstances arising out of it have now formed the main point of enquiry by the deputy magistrate in the present commitment. This paper is dated 7th December 1852 (No. 64,) and acknowledges Toofanee Singh's right to much valuable property, other than *Dhunawan*, as "self-acquired property"—"mulsooleekhas," a term duly entered in the document, with Gunesh Singh's thorough understanding, as fully admitted by him. It was written out in Inayut Hussein's house at Nowada, there signed by Toofanee Singh, who would not quit Nowada, and then taken by Gunesh Singh to Doomrawan, ten miles distant from Nowada, with a letter from Toofanee Singh, authorizing the subscribing witnesses, resident connections of the same family village, witnesses Nos. 1, 2 and 3, to attest it. This letter, No. 66, was produced by witness No. 1, bearing Toofanee Singh's signature, as generally deposited to, and was written by Dewan Chumunlal (witness No. 54,) as sworn to by himself and others. It was intended to have had the deed registered by the kazee, but by the time the subscribing witnesses had signed it, the deputy magistrate having dismissed the two mookhtars, Toofanee Singh, fearful of implicating himself, withdrew from the negotiation. Witnesses Nos. 1, 2 and 3 depose to their having in this manner witnessed the deed, and witnesses Nos. 4, 11, 12, 51, 52, 53 and 54, to the different circumstances connected with it.

There remains the evidences of the witnesses Nos. 7, 8,⁹ and 10, sent up by the deputy magistrate in proof of Pookraj's absence from home at his relatives, in the Hazareebagh district, as accounting for the delay which had taken place in complaining in the first instance.

Bhoopnarain has always adhered to his original defence

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and to his having acted under Toofanee Singh's instructions, assisted by Inayut Hussein. On Pookraj's remonstrating and threatening to complain, he wrote to Toofanee Singh and received two replies (Nos. 35 and 36.) The purport of these two notes assures Bhoopnarain that he need be under no concern. He (Toofanee) would attend whenever Pookraj did, and bring lots of proofs to set aside Pookraj's complaint. No. 35, without signature, is sworn to by Dewan Chumunlal (witness No. 54,) as written by himself on Toofanee Singh's dictation, and No. 36, as being entirely in Toofanee Singh's hand-writing. Two of Bhoopnarain's servants (witnesses Nos. 13 and 14) have always deposed to Toofanee Singh having given him the *mookhtarnamah*, but their testimony in itself is of a very indifferent character.

Toofanee Singh pleads *not guilty*. His defence may be summed up into accusing the prosecution generally of forgery, perjury and conspiracy, and Bhoopnarain of acting in collusion with it, the object being to invalidate Gunesh's own acknowledgment in the criminal court, and the decree of court under which Resal and Gunesh had disclaimed all title to Dhunawan. He urged that there was no necessity for him to have recourse to forgery, to disclaim that of which he thus held full and legal disclaimer. Bhoopnarain's plea, that he had received the *mookhtarnamah* from him, was false in the face of his own signature to it, which purported that he had received it through the absconded witness, Sookhun. Whilst ignoring the *ikrarnamah*, he declared its attesting witnesses improper ones and his personal enemies, to whom it was not likely he would have addressed such a letter, or if he had done so, that he would hesitate to acknowledge it in proof of his own title. He comments on the absurdity of the contents of the *ikrarnamah*, which gave up to him his father's acquired property, upwards of rupees 50,000 in value, whilst Dhunawan, in like manner his father's acquired property, about which all this disturbance was being made, was not worth more than rupees 9,500. He accounts for his uncles' possession of so many original documents, as filed by them before this court, from their having surreptitiously obtained them through his father's concubine. Without directly denying, his father and himself having been general managers for the family in the courts, he yet alleges he would have held general authority to that effect under some document like that now possessed by Pookraj, and that the uncles managed their own court affairs. He would disprove Pookraj's alleged absence at Hazareebaugh by proving his presence at Gya, and to which effect his witnesses Nos. 17, 20, 25, 26, 28, 29, 30 and 31 depose before this court. His witnesses, Khoodeelal and Jundoolal, (Nos. 33 and 35) also

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depose to Pookraj's having executed and signed the *mookhtarnamah* under trial in their presence.

Inayut Hussein has been repeatedly employed as mookhtar in the family affairs, of which it is sufficiently in evidence he must have had local knowledge for years past. Whatever suspicions may attach to his conduct, as I view the case, yet there is no proof of overt-act on his part sufficient to criminate him personally. Doubtless he advised Bhoopnarain, but his simply assisting him with rough drafts, fairing out or procuring stamps for documents knowingly signed and uttered by Bhoopnarain himself, will scarcely suffice to convict him.

The *futwa* of the law officer, noticing that both parties deny the *mookhtarnamah*, yet considers it must have been filed by one of them, since the mookhtar could have had no object in doing so with the principal's consent, and argues that if signed by Pookraj, it was not a forgery, and if by Toofanee Singh, as Gunesh and Resal Singh's acknowledged general mookhtar, it was the same. Viewing also the decree of court and the adjustment attempted by the prosecutor, he acquitted all three prisoners.

As already shown, I concur in Inayut Hussein's acquittal for want of proof of his guilt, and he has been released accordingly, but I differ as to Bhoopnarain and Toofanee Singh's acquittal. There must be hard swearing, endless forged papers and villainy, on one side or the other in this case, not however from any documents and witnesses produced by Toofanee Singh, for, as will be seen in the sequel, his are few or immaterial, but because to hold the prosecution it is necessary to view the numerous *mookhtarnamahs* and *vakalutnamahs* hereafter noticed, filed in the courts between 1842 and 1853, as so many forgeries and perjuries. I find the trust-worthiness of the prosecution generally corroborated by circumstances beyond its control, whilst there is not a single plea urged by Toofanee Singh, which does not turn out to be palpably fictitious or evasive of all thorough enquiry or explanation. Resal and Gunesh Singh are what they represent themselves to be, illiterate yeomen. Both are aged. Resal is a dull, heavy person, who needs the aid of his son, Pookraj, to conduct his affairs, but Gunesh is a very intelligent person, and a great deal happened during his long examination by Toofanee Singh, confirmed also under cross-examination with Chumunlal (No. 54.), which impressed me strongly in favor of the credibility of his straightforward frank replies. Toofanee Singh is as capable a man of court business as any ordinary mookhtar, indeed, though assisted by counsel, he seemed quite equal to conducting his own defence. It is notorious that the court affairs of joint undivided Hindoo families are commonly so

laxly conducted, as to be left almost entirely in the hands of the trusted managing member of the family in the most informal and irregular manner. One name answers for all as the recorded proprietor, and one signature or one hand-writing for all their signatures. This may be a very lax and objectionable system of business, open to much abuse, and adding greatly to the difficulties of detecting any crime it may give rise to, but it is, what must be considered, in the present instance, as tending to develop the credibility or otherwise of the prosecution. Pookraj, it is true, now holds a general power of attorney, because, consequent on the distrust occasioned by the occurrence under trial, he found it impossible to conduct business without it, but this was never the case, either during Toofanee Singh's or his father Bhurut Singh's management, as amply proved by the numerous original joint *vakalutnamahs* and *mooktarnamahs*, (Nos. 1 to 19 inclusive,) which have been inspected during this trial. If the family was not, according to Hindoo usage, a joint and undivided one, or if Toofanee Singh was in any way possessed of separate property, nothing ought to have been easier than his proving it, to the signal defeat of the prosecution by the production of unobjectionable testimony and positive and incontestible documentary proofs to such effect, which, in such a case, he ought to have had, whereas the little of an indirect character which he does adduce, as serving for the moment to color his defence, in reality tells to the contrary. Gunesh's reply to the magistrate, 17th May 1842, No. 48, "regarded the apprehension at Dhunawan of one Mohun Singh absconded, which his brother, Bhurut Singh, who held the *milkeenut* and *mokurruree* of that place, and on whom the warrant had issued, had, under a letter, instructed him to effect." The excuse thus made was suited to the occasion, and natural enough, for the warrant had issued in Bhurut Singh, the recorded proprietor and manager's name, and who was thus the person directly responsible, and not Gunesh. The magistrate did not acknowledge it as a disclaimer, for his order at foot the next day dismissed Gunesh with a warning as "ilaqadar." This is perverted into disclaimer the first; the second, as obtainable from the principal sudder ameen's decree of 28th of November 1843, No. 51, is of a graver and more direct character, which, if not of a fraudulent nature, on the face of the decree itself, and as much out of place and foisted into the civil suit, as that above narrated in paragraph 2, for the third or final disclaimer (deputy magistrate of Nowada's proceedings, 2nd November 1852) in the Act IV. suit regarding "a petty water-course," would have held due weight in staying this trial. The former merely records mention of Bhurut Singh's having disclaimed "on Resal and

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Gunesh Singh's behalf all right and title in Dhunawan, which belonged to himself alone." The authority for such disclaimer appears to have been the *vakalutnamah* (No. 12,) 25th November, signed by Bhurut Singh, as malik mokurrureedar, bearing Resal and Gunesh's signature, unaccompanied by any such title. The two latter signatures are disavowed, and are sworn to as being in Bhurut Singh's hand-writing. The three vakeels' endorsement thereto, of 29th December 1842, certifies to the receipt of this *vakalutnamah* from Bhurut Singh alone. The three signatures, Bhurut, Resal and Gunesh, are manifestly in one and the same hand-writing, and correspond to Bhurut Singh's signature and writing, in the *vakalutnamahs* and *mookhtarnamahs*, (Nos. 1 to 15 inclusive,) recognized and deposited to as Bhurut Singh's writing, and which, as found on such documents, cannot be otherwise than genuine. The production of these original *vakalutnamahs* and *mookhtarnamahs* was caused by Toofance Singh's questioning Gunesh Singh regarding them, evidently with no other object than to cast discredit on his alleged ignorance of and disconnection with court affairs, and with no honest intention of any thorough enquiry into the matter, because, when the orginals were brought into court on my calling for them, he ceased to pursue the subject further, although his own cross-examination of the witnesses was continued at length long afterwards. A general view of these documents affords singular results. Nos. 1 and 2, 4 and 5 (not certified by the mookhtars, though signed by Bhurut Singh on behalf of all three,) 9, 10, 11, 12 and 13 stand certified to as having been received from Bhurut Singh, whereas those certified to as hav-

ing been received from the uncles or nephew, as per margin, are all of dates subsequent to the *vakalutnamah* No. 12, of 25th November 1842. The within are sworn to as of Bhurut Singh's writing, and per-

No.	DATE.	CERTIFIED AS RECEIVED FROM.
3	21st June 1847,	Gunesh Sing.
6	3rd August 1849,	Not given, but purported as signed by Bhurut, Resal and Gunesh.
7	20th February 1843,	Resal Singh.
8	20th January 1849,	Bhurut Singh, Resal Singh, Gunesh Singh.
14	17th February 1848,	Gunesh.
15	26th March 1848,	Pookraj.

forming which a similar comparison of hand-writing supports. My examination of the witnesses for the prosecution, relative to these documents, from Nos. 1 to 15 inclusive, produced singularly consistent testimony, which is entitled to greater weight, as such examination must have been totally unexpected.

If these official records had been genuine, the uncles must have had full fore-knowledge of them, which seems almost prohibitory under such circumstances to their daring a false prosecution, and, if genuine, Toofanee Singh, also could not have had any difficulty in proving them in all their details, and thereby have directly maintained the uncles' management of court affairs, their cognizance of the disclaiming *vakalutnamah* No. 12, of 25th of November 1842, and the truth of his defence, whereas of the numerous witnesses called by him, only one has been produced, who could be questioned regarding them, *viz.* Moonshee Mahadeo Dutt Vakeel (witness No. 26,) who recognized and deposed to having received *vakalutnamahs* Nos. 9, 10 and 11 from Bhurut Singh. He alone, also, of Toofanee Singh's witnesses, deposed to Toofanee Singh's possession of separate property, but in such a manner as to prove its own worthlessness. His knowledge thereof was only documentary, not from any thing he had seen, for although his family residence was only four miles distant from Doomrawan, yet he had only visited the family occasionally, perhaps for a night or so during the holidays. Looking to the foregoing results, the forgery under trial would appear to have been a legacy handed down from father to son, which, aided by their own position, the negligent ignorance of the co-sharers, and the forms of courts, was deeply and wickedly designed to be propped up by baseless official documents, carefully accumulated during distant intervals, so as to insure success to the final forgery now under trial, a counter-part as I regard it to that of 1842-43. The quiet surreptitious entry of the first in 1842, and its pettifogging followers, not one of them of a more public character, and all of them effected at the sunder station, was a matter of easy concealment from country yeomen like the uncles, residing 40 miles distant; and it is consistent with such state of things, that when the like was attempted in the deputy magistrate of Nowada's court, within their own immediate*neighbourhood and cognizance, they opposed it by the present prosecution, if not at once, for Pookraj's absence cannot excuse Resal or Gunesh's, within as few days as under such trying circumstances could have been expected of them, since, until after the failure of the *ikrarnamah*, the uncles were certainly disinclined to push the prosecution against the nephew. There was therefore, at this period, doubtless, some temporizing, and whether Pookraj was absent at Hazareebaugh or present at Gya, as deposed to on both sides, does not appear very material. The extraordinary conditions of this *ikrarnamah*, "the *muhssooleekhas*" or "acquired property" are unaccountable, except as prepared under Toofanee Singh's instructions in conformity with his

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claims, and then given to Gunesh, as generally deposed to, to show to others, for his own approval, as appears to have been done to Kazee Imam Alee (witness No. 52) and darogah Ujoodhy Pershad (witness No. 53.) The ignorant uncles thus appear to have been in the nephew's hands to the very last, and all that they have seemed to care for at all risks and costs, and in which they have been consistent throughout, has been redress for the forgery complained of, as Gunesh said, their only object was to please their nephew. All the circumstances attending this transaction, whether commencing with Pookraj's first mention of it to the deputy magistrate of Nowada, on the 7th December 1852, No. 2, or ending with the production of the *ikrarnamah* in its informal state in appeal, all tend to add credibility to what has been narrated of it. Toofanee Singh declared its attesting witnesses, Nos. 1, 2 and 3, improper persons for such an occasion, but Gunesh and Chumunlal's examination in this respect, originating with himself, establishes the contrary, all concerned, including himself, being descendants of one common ancestor, *viz.*, Lallaraie. The prosecutor swears that Pookraj Singh's signature to the *mookhtarnamah* under trial is in Toofanee Singh's hand-writing, as noted in the margin, supports the prosecution, which is not disproved by the inconsistent, incredible testimony of two manifestly tutored witnesses, Khoodeelal (No. 33) and Jundoolal

Pookhraj's signature.

Record Nos. 1, 2, 3, 2, 7, 6, 96, 97, 115.

Toofanee Singh's signature and writing.

Vakalutnamahs Nos. 17, 18, 19.

His defence before deputy magistrate, 1st March 1853, No. 37.

Mookhtarnamah to Inayut Hussein in Act IV. suit, No. 17.

The Note, No. 36.

Nos. 1 to 16, original receipts filed.

(No. 35,) whose examination by Bhoopnarain, to which I beg to refer for details, exposes their worthlessness, and who, although they swear to having seen Pookraj sign the *mookhtarnamah*, yet acknowledge that his signature thereto is very unlike those to the within noted documents. Toofanee Singh's looking after the family's law affairs in court was habitual, and his attendance in the deputy magistrate's court, when the forged document was uttered, is undoubtedly, for his own *mookhtarnamah* to Inayut Hussein, in the identical Act IV. suit, bears the same date, the 1st of October 1852, and its stamp purchase of the same date is certified to in the name of the absconded witness Sookhun, whom Toofanee Singh, before this court, pretends he employed on the occasion as the only person he found at hand, his own servants having been knocked up by the journey to Nowada. Bishenpersaud (wit-

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ness No. 50,) Kubeeroodeen (witness No. 55,) amlah of the deputy magistrate's court, though not remembering whether Toofanee Singh was present at the verification of the *mookhtarnamah* under trial, yet depose he was present at his own to the mookhtar, Inayut Hussein, above referred to, and which took place immediately afterwards. Lax as the system of procuration has been, under which the co-sharers' signatures have thus been filed in court, yet it could hardly uphold Toofanee Singh in forging away his co-sharer's rights in the manner so singularly plotted for such a length of time by his father, and finally accomplished by himself, and if it did, still the law officer's argument does not hold good, since Toofanee Singh has never pleaded to his having signed the *mookhtarnamah* under trial on Pookraj's behalf, but on the contrary, has produced, as above remarked on, two false witnesses to swear that Pookraj himself had signed it in their presence.

Satisfied, therefore, that the *mookhtarnamah* under trial is a gross forgery, I find less difficulty in disposing of Bhoopnarain's guilt. On his showing he accepted the *mookhtarnamah* in Pookraj's absence, whose person or hand-writing was unknown to him. The oaths of its two attesting absconded witnesses cannot benefit him, for he told the deputy magistrate they were both unknown to him, yet his own signature accepting it, purports to his having received it from Sookhun at direct variance to his defence of having received it from Toofanee Singh. Under such circumstances, there is acknowledged forgery itself in such a signature. I find nothing in the principal sudder ameen's decree, 28th November 1843, which could have excused him for acting on Toofanee Singh's suggestion in so serious a matter, more especially when the particulars mentioned in the decree itself should have warned him, that Bhurut Singh's disclaimer, through the court in 1843, was just as fictitious as Toofanee Singh's through himself in 1852. In both cases the interested person himself claimed the property for himself and disclaimed it for others in their avowed absence! It was peculiarly his duty, therefore, to have communicated with his principal before acting in such a case, which he never attempted to do, though only a few miles distant, and his proceedings were conducted deliberately enough, the *mookhtarnamah* being filed on the 1st of October 1852, and the disclaiming petition under it (No. 16) not until the 6th idem. Such conduct is incomprehensible, except as according with Toofanee Singh's fraudulent proceedings throughout, to which he must thus have so readily lent himself. Evidence is wanting to prove that he had a full and guilty knowledge at the time, from his previous personal acquaintance of the family affairs, that the disclaimer he thus entered was false,

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though Inayut Husseini, mookhtar, undoubtedly had, and it seems impossible they could thus have acted together in the same suit, without Bhoopnarain having ascertained all particulars regarding his clients, if unacquainted with them before; moreover, some acquaintance with the matter is fairly presumable from Bhoopnarain having held the *mookhtarnamah* No. 2, of 21st August 1847, on Bhurut Singh, Resal Singh, Gunesh Singh, and other's behalf, as certified by himself thereon, as received from Bhurut Singh, and further recognized by his witness Noornarain (witness No. 15,) who held this *mookhtarnamah* jointly with him and Inayut Husseini, and was well aware of the family being a joint and undivided one, though he could not say whether Bhoopnarain was equally so or not, while his other witness Deyba Suhai (witness No. 16,) deposes that he must have been as well aware of it as himself and all other mookhtars, and people generally in that neighbourhood.

Thus viewing the prosecution in all its bearings, I find no reason to doubt its truthfulness, or the utter weakness and dishonesty of Toofanee Singh's defence. I convict both prisoners on strong presumption, Toofanee Singh (prisoner No. 10) of having forged the false and fabricated *mookhtarnamah* of 1st October 1852, in the name of Bhoopnarain Mookhtar, on behalf of Pookraj Singh, for himself and Resal Singh in the case of Sheeo Suhai and Kumulaput *versus* Toofanee Singh, and Bhoopnarain as an accomplice therein, and would sentence Toofanee Singh, (prisoner No. 10) to five (5) years' imprisonment with labor and irons, and Bhoopnarain (prisoner No. 9) to three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs J. Dunbar and H. T. Raikes).—*Charge*—forgery and uttering a forged deed, knowing the same to be forged.

Mr. Waller appeared for Pookraj Singh.

Baboo Ramapershad Roy for the Government.

The pleaders on behalf of the appellants are—

Mr. Colebrooke, Moonshee Ameer Allee, and Baboo Kishenkishore Ghose for Toofanee Singh.

Baboo Chundernauth Dutt for Bhoopnarain.

This case was ready for hearing before the Court closed for the long vacation, but the hearing was postponed at the request of the pleaders, who did not wish to be detained during the holidays. The whole of the pleaders are not now present, but as one or other of them has failed to attend on several other occasions, when the case was marked for hearing, and as this day was fixed at the request of these parties themselves, the Court cannot consent to any further postponement.

Mr. Colebrooke commented at some length upon the evi-

dence for the prosecution, contending that it is insufficient for conviction. He quoted a passage from Will's *Essay on Evidence* (page 152,) with a view to show from the remarks of Sir John Nicholl, how little reliance can be placed on evidence to handwriting.

On due consideration of the evidence for the prosecution, as set forth at length in the letter of the sessions judge, we see no reason to question the correctness of the conclusions at which he has arrived, in respect to the guilt of both the prisoners. The evidence, in our opinion, is sufficient to show that Pookraj did not sign the *mookhtarnamah*, that it was made use of for the sole benefit of Toofanee, and that Bhoopnarain must have been well aware that Pookraj's interests were being sacrificed without his knowledge.

We therefore affirm the conviction and pass sentence, as recommended by the sessions judge.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT, WUZEER SINGH BABHUN, AND
NEEMUL ROY BABHUN
versus

TITRA RAJWAR.

CRIME CHARGED.—Theft of *dhan* valued at rupees 2-8, belonging to Nowneed Roy, and property valued at 14 annas, belonging to Bundhoo Roy, brother of Neerusul Roy, total rupees 3-6, from Khuleean, attended with wilful murder of the said Bundhoo Roy.

Committing Officer—Mr. A. G. Wilson, deputy magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 8th November 1853.

Remarks by the sessions judge.—This trial is supplementary to that originally reported in my letter No. 51, dated 12th March 1853, and in which, by the superior Court's proceedings of the 18th April 1853, Neymchand Sheywug and Jhurree, prisoners, were convicted of aggravated culpable homicide of Bundhoo Roy, and sentenced to fourteen (14) years' imprisonment with labor in irons.

The deceased had been for several years past burrail or overseer of Dilodha, of which place the prisoners previously convicted were resident cultivators. On the night of the 15th of December last, the prosecutor Wuzeer Singh, a fellow-burrail, was with the deceased in the same shed in charge of their employer's grain at a spot where it was stored, at some consider-

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Prisoner
convicted of
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cide, sentenced
to fourteen
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able distance from the village, when it was attacked by a body of some 10 thieves, who, first binding Rewut Rajwar (witness No. 5,) the budhwara or watchman, who, like the other eye-witnesses, was also passing the night in their stores of grain close by, began plundering the grain, whilst six of them made a rush at the two burrails. Both ran, Wuzeer Singh escaped, but the deceased falling, he was so brutally beaten by his assailants as to cause his death on the 18th following.

The prosecutor, Wuzeer Singh, and the eye-witnesses depose to their having recognized the prisoner as one of the deceased's assailants, and during the original trial he was duly named by them as the convict Sheywug's brother-in-law, which relationship, as well as his visit to the village the day of the night of the occurrence, was duly acknowledged in the first instance before the police by all three convicts.

The prisoner, pleading *not guilty*, has set up no particular defence, but has called four witnesses, who know nothing in his favor.

The *futwa* of the law officer convicts the prisoner of the culpable homicide of the deceased, and declares him liable to punishment for the price of blood by *deyut*.

On the original trial I convicted the offenders of the wilful murder of the deceased, which being set aside by the superior Court, it now behoves me, in accordance with their decision, to convict the prisoner of the aggravated culpable homicide of the deceased; and as under all the circumstances of the case, his guilt in no degree differs from that of those already convicted, I would sentence him in like manner to fourteen (14) years' imprisonment with labor in irons, thus causing the necessity for the present reference.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The evidence is clear as to the prisoner having been an *active* party in the assault, which caused the death of Bundhoo Roy. Concurring in the conviction, the Court sentence him to be imprisoned for fourteen (14) years, with labor in irons.

PRESENT :
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND LUCKHUN MUJLEA
versus

KISHTO GOPE (No. 5,) RAMCOOMAR GOPE (No. 6,) DOORGACHURN GOPE (No. 7,) ISSUR GHOSE (No. 8,) KOORARAM GHOSE (No. 9,) MUHESH GHOSE (No. 10,) THAKOORDASS CHATTERJEA (No. 11,) BHUJOHURREE PAL (No. 12,) AND MUDHOOSOODUN CHATTERJEA (No. 13.)

CRIME CHARGED.—1st count, wilful murder of Ramdhun Mujlea ; 2nd count, aiding and abetting in the above wilful murder of Ramdhun Mujlea, and 3rd count, accessory after the fact to the above wilful murder of Ramdhun Mujlea.

Committing Officer—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. H. F. James, sessions judge of East Burdwan, on the 6th of August 1853.

Remarks by the sessions judge.—The deceased, in this case of murder, was one Ramdhun Mujlea, who lived in the village of Salgaon and carried on mahajunee business with the assistance of his son, the prosecutor. Having some money to collect in the village of Busutpore, the deceased left his house early in the morning of the 1st of last Cheyt (13th March,) and reached Busutpore about 8 or 9 A. M. of that day. He persuaded a neighbour of his, one Ramessur, a resident of Salgaon, and Tarachand, a friend of his, to accompany him on the trip, and the three persons, on reaching the village of Busutpore, proceeded to the house of Thakoordass Chatterjea, who appears to have been one of the principal persons in the village. They sat down and smoked for a short time, and while Ramdhun opened his small bundle, containing some account-books and various papers, Ramessur was sent by him into the village to call one Bhujohurree Pal, (prisoner No. 12,) a person to whom Ramdhun had lent some money. Bhujohurree attended to the call, and shortly after he arrived at Thakoordass' house; Kishto Gope (prisoner No. 5,) Ramcoomar Gope (prisoner No. 6,) Doorgachurn Gope (prisoner No. 7,) Issur Ghoze (prisoner No. 8,) Kooram Ghoze (prisoner No. 9,) Muheesh Ghoze (prisoner No. 10,) and Mudhoosoodun (since dead) also came in. Many of these were debtors of Ramdhun ; and while talking over the accounts, he told Bhujohurree that he must pay the money he owed. Upon this, Bhujohurree immediately abused the deceased, and Kishto Gope (prisoner No. 5) seized him by the hair of the

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abetting in the
murder of a
mahajun,
who had gone to
demand his
dues of them,
sentenced to
transportation
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head, and abusing him, dragged him from the place where he was sitting, and called on the others to beat him; and they seized some bamboos and a wooden mallet, which were laying near the spot at the time, and beat him until life was extinct. Ramessur and Tarachand, who had accompanied the deceased to the village of Busutpore, witnessed the severe and unmerciful beating he received and remained near the spot until he was killed, when the former came off to tell the deceased's son of the occurrence. The son started for the village of Busutpore with Ramessur, and on their way, they met the whole of the prisoners carrying away the corpse of Ramdhun from the village of Busutpore, but on their seeing the deceased's son, they threw the body to the ground and ran away, though they subsequently made an attempt to get possession of the body.

Information was sent to the police, and an inquest was held on the body, and the witnesses to the inquest speak to the various marks of severe beating on the body, to the arms being broken and to one leg being fractured, and to the nose being beaten in; the left arm and left leg had been broken by the joints being twisted backwards; and the civil assistant surgeon, in describing the wounds states, that he found "a very severe wound on the back of the left knee-joint, and the end of the thigh-bone protruding through the wound, all the large vessels of that part were torn, the bones of the nose broken," and he is of opinion that death was caused by hemorrhage.

That the man was brutally murdered, there can be no doubt, and there is proof that his body was cruelly mutilated and disfigured, either when they were killing him or after death, and I consider the crime clearly and satisfactorily proved against the prisoners. There is no reason to doubt the evidence of the two eye-witnesses to the deed. They tell a plain unvarnished tale, which is corroborated in all its bearings by the testimony of other witnesses, and in no part of their statements have I discovered any material discrepancy. It is difficult to account for the sudden display of so much fierce and brutal feeling on the part of the prisoners, which resulted in the murder of the man, and there is no evidence in the case of any bad feeling towards the deceased by the prisoners; but some witnesses state that some of the debts due to the deceased were of long standing and that he had threatened to bring the matter into court, unless some settlement was made. All the prisoners were debtors of the deceased, and it is possible, that in consequence of his harassing and inopportune demands, they might have formed among themselves some idea of punishing him, however I do not believe that they at the first commencement of the beating had any intention of murdering the man, they

were excited and instigated by the cries of Kishto Gope, a large powerful man, who held by the hair of his head the deceased completely in his power, and finding the bamboos and the large wooden mallet so ready to their hands, they thoughtlessly inflicted some severe blows, and when they discovered that their treatment had seriously injured the deceased, they completed the crime by the inhuman and cruel beating which caused his death. I hold the prisoners severally and jointly responsible for the death of the man. They were all present at the time, and they all joined in the beating of the man, and each displayed, according to the testimony of the witnesses, an equal share of savage feeling towards the deceased, and subsequently they were all concerned in carrying away the body.

When the police officers held a local investigation into the case, all the prisoners had absconded and had left the village. Prisoner No. 5 was arrested by the police two days after the occurrence ; prisoner No. 6 was apprehended three days afterwards some 8 *coss* from the scene of the murder ; prisoner No. 7, was apprehended on the 24th of March, and the remainder of the prisoners (Nos. 8, 9, 10, 11 and 12) presented themselves at the magistrate's court 17 days after the occurrence, with a petition to the effect, that hearing that they had been summoned to answer regarding the murder of Ramdhun in their village, they came forward to stand their trial.

The prisoners plead *not guilty*, but in their defence they do not bring forward any plea deserving of notice, or any matter at all affecting their irresponsibilities in the case before the court. Some of them attempt to prove *alibis*, and the remainder admit that they were at their villages on the day in question, but that they were otherwise engaged.

Prisoner No. 5, Kishto Gope, says, that on the 1st of Cheyt he was absent from his village and did not return until the following day, and named certain witnesses to prove the fact, who certainly support his statement, but it is an easy matter for a native to find friends to depose according to his wishes in the hope of securing his release.

Prisoner No. 6, Ramcoomar Gope, produces witnesses to prove, that the day after the occurrence he was arrested by the police, some 8 *coss* from the village where the murder occurred. The remaining prisoners assert, that on the night of the 30th Phagoon, there was a *poojah* at Thakoordass' (prisoner No. 11's) house, and that they were engaged in the *poojah* the greater part of that night, and until 12 o'clock the following day (the 1st of Cheyt.) Many witnesses are adduced to speak to this fact, but I hold their evidence as worthless and undeserving of credit.

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KISHTO GOPE
and others.

I tried the case with the assistance of the law officer, whose *futwa* convicts the whole of the prisoners of being accomplices in the murder of Ramdhun Mujlea and deserving of punishment by *acoobut*. In this *futwa* I concur, and I see no extenuating circumstances in the case to demand any merciful judgment. The harmless and unoffending man was attacked in an unguarded moment, while pursuing his daily avocation and business, by the nine prisoners, who brutally maltreated him and murdered him, and I recommend that Kishto Gope (prisoner No. 5,) Ramcoomar Gope (No. 6,) Doorgachurn Gope, (No. 7,) Issur Ghose (No. 8,) Kooraram Ghose (No. 9,) Muhesh Ghose (No. 10,) Thakoordass Chatterjea (No. 11,) and Bhujohurree Pal (No. 12) be transported beyond seas for life.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The sessions judge and the law officer convict the prisoners of being accomplices in the murder of Ramdhun Mujlea, on the evidence of the witnesses who accompanied the deceased from *Salgram* to Busutpore. Other witnesses also, on hearing the cries of the deceased, ran to the spot and saw the prisoners standing near and round the corpse. The prosecutor and the witness, Ramissore Dan, who ran to his house to inform him of what was going on at the house of prisoner No. 11, on their way to Busutpore, met the prisoners who were carrying off the corpse, as did two witnesses, Modhoosoodun and Nobo-coomar.

It is difficult to determine what part each prisoner took in the assault. The deceased was the creditor of some of the prisoners and was in the habit of lending money to the villagers of Busutpore. Deceased had gone specially for the purpose of demanding his dues, and when about to look into the accounts of prisoner No. 12, some dispute arose, which brought on the general assault by the other prisoners, who also were called for by the said prisoner.

The pleader for the prisoners wishes to throw discredit on the evidence for the prosecution, as none of the witnesses are residents of Busutpore, where the murder took place. Under the circumstances, it is not to be expected that any of the Busutpore villagers should be forthcoming to depose against the prisoners. The witnesses are, however, residents of *Salgram*, the next village, and some of the prisoners were previously known to them. The prisoners Nos. 5 and 6 plead *alibi*, and have summoned witnesses to establish the fact; neither the sessions judge nor the law officer however attaches any credit to their statements. The remaining prisoners state that they were all present at a *poojah*, which was going on at the house of the prisoner No. 11, and further urge, that one Chukun

Lal has leagued with the prosecutor to get them into trouble with the view to enhance their rents. Of this plea, there is neither oral nor documentary proof. Indeed, no attempt is made to show that there is any connection between the prosecutor and Chukun Lal.

I see no reason to differ from the sessions judge and the law officer, in the view they have taken of the evidence for the prosecution, and the reliance they place on it, as compared with that adduced by the prisoners in their defence.

There was no time given for getting up a story and preparing evidence in its support against the prisoners. Information was conveyed to the thannah, 4 *coss* distant, without delay, and the prisoners were then named as the parties who had committed the assault upon an unarmed and inoffensive man. I concur in convicting the prisoners of aiding and abetting in the murder of the deceased, Ramdhum Mujlea, and sentence them, as proposed by the sessions judge, to transportation for life.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

SHOOKRA CHIOWKEEDAR (No. 9,) RAHIM MULLAH*
(No. 10,) KASHEE SONAR (No. 11,) ULLEE SIR-
DAR* (No. 12,) AND KHOOMARDEE SHAH (No. 13.)

CRIME CHARGED.—1st count, dacoity; 2nd count, knowingly taking and being in possession of property obtained by dacoity, and 3rd count, privity.

CRIME ESTABLISHED.—Prisoners Nos. 9 and 11, knowingly receiving property plundered in dacoity; prisoner No. 13, accomplice in dacoity.

Committing Officer.—Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 24th August 1853.

Remarks by the sessions judge.—This was a simple dacoity, committed, according to the owner of the house, by a gang of 20 or 25 men, and who, on receiving a blow on the arm, fled and hid himself. The six articles found in the houses of the prisoners, both they and the prosecutor claimed, with the exception of a *hunslee*, numbered 6, the rest consisted of 2 *tals*, 2 *kutoras*, and a cloth. There was evidence to recognition, but not to be relied on in my opinion.

1853.

December 10.
Case of
KISHNU GOPE
and others.

RAJSHAHYE.

1853.

December 10.
Case of
SHOOKRA
CHOWKEE-
DAR and
others.

Conviction
and sentence
passed by the
sessions judge
in a case of
dacoity upheld
in appeal.

* Prisoners Nos. 10 and 12 were acquitted by the sessions judge.

1853.

December 10.

Case of
SHOOKRA
CHOWKEE-
DAR and
others.

No. 13 confessed, both in the mofussil and before the magistrate, that he had been made to accompany the dacoits, and that the *hunsslee* he received from No. 10, who was his father-in-law, to sell and who told him to keep half the proceeds. I have therefore, on his confession, proved to have been voluntarily made, and the finding of the *hunsslee* (under some cow-dung and sticks used for cooking purposes,) convicted him of being an accomplice in dacoity. Nos. 9 and 11 I have convicted of knowingly receiving plundered property, *viz.* a *tal* and cloth found in the house of No. 9, and a large *kutora* in that of No. 11. Both set up the same *alibi*, that they were at the house of No. 12 on the night of the occurrence, and the best evidence tendered in the case was that of witness No. 9, who had been deputed by the zemindar to measure and assess some lands in the village and was staying in the house of No. 12 at the time.

Sentence passed by the lower court.—Three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The mofussil examination of Shookra Chowkeedar is such as to throw strong suspicion on him; and Kashee Sonar is mentioned both by him and in the confession of Khoomardee Shah. These circumstances warrant the admission of, and reliance on, the testimony given to the identity of the property.

The sentence is confirmed.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND KHOOJEE BISWAS

versus

JHATTUN SIRKAR.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, from which property to the value of rupees 753 was stolen ; 2nd count, receiving and possessing the property, knowing the same to have been acquired by the said burglary, and 3rd count, privity to burglary before and after the fact.

MOORSHEDA-
BAD.

1853.

December 10.

Case of
JHATTUN
SIRKAR.

Prisoner convicted of privity to burglary by the sessions judge; no forcible entry being proved, the conviction was altered in appeal to privity to theft.

CRIME ESTABLISHED.—Privity to burglary.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 23rd September 1853.

Remarks by the sessions judge.—On the night of the 6th August 1853, Krist Gobind, gomashta of the factory of Heraupore, with other amlah of the factory, closed their cutcherry about 10 P. M., and placing their office box inside another larger one, which they locked up, went to their respective houses, giving the key of the outer-chest in charge to Golejar Khan, chowkeedar of the factory. Some time during the night, the outer-chest was opened and the small box taken out, and a sum of rupees 20 stolen from it, as also rupees 733 in cash and bank-notes, from an iron chest, which was locked up in the room where the master of the factory lived, and the key of which had been deposited in the small box. The next morning, the gomashta, on hearing what had happened, threatened the servants of the factory, when one of them, the prisoner Jhattun gave out that Golejar Khan and others committed the theft and the money was concealed in the *maidan* of Tez Singhpore, where he pointed it out, and rupees 59 in cash and rupees 100 in notes were found there. Information of the robbery was immediately given to the thannah and the darogah sent in the prisoner to the magistrate, who committed him for trial to the sessions court. The prisoner stated in his defence before the sessions court, that had he not given the information, as to where the property was kept, it could not have been discovered and that he was not arrested at first as a thief.

The assessors, who sat with me on the trial, convicted the prisoner of privity to the burglary, as there was no other evidence against him, besides his confession at the thannah

1853.

December 10.

Case of
JHATTUN
SIRKAR.

and before the magistrate. It was perfectly impossible that this robbery could have been perpetrated without the assistance or connivance of the guard over the chests, in which the property was deposited, and I think the prisoner has told the truth in his confession. The principals have escaped, and the prisoner upon his own confession can only be brought in guilty of privity to the crime. The sessions judge, concurring in the verdict of the assessors, sentenced the prisoner, as stated in the proper column, on full legal proof.

Sentence passed by the lower court.—Imprisonment for the period of three (3) years, and payment of a fine of rupees 50 on or before the 7th October 1853, or in default of payment to labor until the fine be paid of the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I can find nothing, either in the confessions of the prisoner, or in any paper or deposition attached to the record, to support the charge of burglary. No force or violence of any kind would appear to have been used in effecting an entry into the house, so as to make it a burglarious entry. That the theft charged was actually perpetrated, and that the prisoner was privy to it, is clear from his mofussil confession, which is duly attested, and from the fact of his having himself pointed out the stolen property.

I convict the prisoner of privity to theft, and sentence him to be imprisoned for one year. The sentence of the sessions judge, so far as it regards the fine to be paid in commutation of labor, will stand.

PRESENT:

A. J. M. MILLS, Esq., }
 AND } *Judges.*
 H. T. RAIKES, Esq., }

GOVERNMENT AND MUSST. DOOKHINEE
versus

SHEIKH KURREEM.

CRIME CHARGED.—Wilful murder of his wife Musst. Kaminee.

Committing Officer—Mr. C. W. Mackillop, officiating magistrate of Dacca.

Tried before Mr. C. T. Davidson, commissioner with powers of a sessions judge, Dacca, on the 4th November 1853.

Remarks by the commissioner with powers of a sessions judge.—The prisoner is charged with the wilful murder of his wife, Musst. Kaminee. It appears that the prisoner married deceased 10 or 11 years ago, and that about four months after the birth of a son, he turned his wife out of his house; she went and lived with her mother, the prosecutrix, taking her child with her. This happened about 16 months after their marriage. The prisoner left his home also and went to Calcutta, where he remained a twelve-month, and then returned and married another woman, with whom he lived a couple of years, and then drove her from his house in like manner.

The prosecutrix states, that in Assar last, the prisoner took deceased, with their son, back again to his house, and that very early on the morning of the 29th August last, two children came and informed her that the prisoner had killed her daughter with a *dao*. She went immediately to his house and saw her daughter lying dead.

The eye-witnesses, Sheikh Ashruff, Sheikh Dengoo, and Musst Doolie, whose houses are adjoining that of the prisoner, depose to having heard the cries of deceased at a little before day-break of Monday the 13th or 14th Bhadoon, to having gone to the house of the prisoner, and through the *tattie*, the grass of which they pulled apart, seen him in the act of striking his wife with a *dao*. They forced open the door of the house, and found the deceased lying on the ground at the point of death, and the prisoner standing by her with the *dao* in his hand. On their entering, the prisoner got under a *machan* and laid himself down. The deceased died a few minutes after they entered the house. They depose also to the prisoner and his wife having quarrelled during the previous day about her familiarity with one Tarnee Patnee. The prisoner was immediately arrested by the chowkeedar, and the case promptly enquired into and reported by the police.

DACCA.

1853.

December 10.

Case of
SHEIKH
KURREEM.Prisoner
convicted of
the wilful
murder of his
wife, sentence-
ed capitally.

1853.

December 10.

Case of
SHEIKH
KURREEM.

The prisoner confessed both before the police and the magistrate, that he murdered his wife, in consequence of her carrying on a criminal intercourse with the aforesaid Tarnee Patnee. At the conclusion of his foudary confession, he turns round and charges Tarnee Patnee and others with the murder. These confessions have been duly attested before this court.

The evidence of the witnesses to the inquest held by the police, and the report and depositions of the civil surgeon before the magistrate and this court, prove that deceased was brutally murdered. The *dao* with which the deed was committed belongs to the deceased's mother, and was borrowed from her by the prisoner the day before the murder. It is somewhat heavier and longer than instruments of this description usually are.

The circumstantial evidence goes to show that the prisoner suspected his wife of favoring Tarnee Patnee, but beyond his accusations no guilty intercourse is established against her.

The prisoner recalls his confessions, and in his defence, after narrating his marriage with Musst. Kaminee, 10 or 11 years since, her leaving his house, his departure for Calcutta, his return and re-marriage to another woman, their separation, and his receiving back his first wife (the deceased) in Assar last, urges that she was induced to leave him in the first instance by Tarnee Patnee; that since her return to him, in Assar last, the said Patnee has been again attempting to entice her away; and that, having failed to induce her, he and others forcibly entered his house on the day following the *jumaush-tumee poojah* and beat him and deceased. The prisoner called witnesses to prove that he did not turn his wife out of his house, but that she was induced to leave him by Tarnee Patnee. They have been examined, but they deny having any knowledge of the circumstance.

The *futwa* of the law officer convicts the prisoner of the wilful murder of his wife, Musst. Kaminee, and declares him liable to *kissas*, in which finding I concur; and being unable to discover any single extenuating circumstance in favor of the prisoner, I beg to recommend a capital sentence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and H. T. Raikes.)—*Mr. H. T. Raikes.*—Independent of the prisoner's confession before the magistrate, admitting first the death of his wife by his hand, in consequence, as he says, of her attempting to kill him, and then accusing Tarnee Patnee of killing her, there is the evidence of three persons, who, attracted to the house by the woman's cries, observed the prisoner strike her repeatedly with a *dao*, before they could afford any assistance. The proof against the prisoner is therefore conclusive as to his being the

murderer, and there seems no ground whatever for believing that any such attack as he speaks of was ever made by the woman upon him. As I see no extenuating circumstance in his case to warrant any remission of the capital sentence proposed by the sessions judge, I would sentence him to suffer death.

Mr. A. J. M. Mills.—I concur with Mr. Raikes in the view he has taken of this case. I see no reason to discredit the evidence, or doubt the genuineness of the confessions of the prisoner; and seeing no ground for passing a mitigated sentence, I am of opinion that the prisoner should suffer death.

1853.

December 10.

Case of
SHEIKH
KURREEM.

PRESENT:

SIR R. BARLOW, BART., Judge.

GOVERNMENT

versus

PORAN SIRDAR BAGDEE (No. 14,) SHEIKH EMAM-
DEE (No. 15,) AND BHOJAH OORAY* (No. 16.)

CRIME CHARGED.—1st count, dacoity in the house of Shur-fuddy Oostaghur, at Teleneeparah, on the night of the 27th August 1853, and 2nd count, having belonged to a gang of dacoits.

Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 12th September 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the commissioner for the suppression of dacoity, and are charged with dacoity and having belonged to a gang of dacoits.

They plead *not guilty*.

The proof against the prisoners is the evidence of two approvers, who gave a detailed account of the dacoity charged, and conclusively establish the complicity of the prisoners. Their statement tends also to show, that the prisoners Poran Sirdar Bagdee and Sheikh Emamdee took part in other dacoities under known leaders.

The gang, who committed the dacoity in question, was organized by the approver, Kilas Tantee, and acted under his directions. They embarked from Calcutta in two boats, took in reinforcements at Barnagore and moored at Teloneeparah about 10 P. M. Here they made the necessary preparations and after performing *kali-pojah*, proceeded to the

HOOGHLY.

1853.

December 10.

Case of
PORAN SIR-
DAR BAGDEE
and another.

Two prison-
ers convicted
of dacoity and
of having be-
longed to a
gang of dacoits
sentenced to
transportation
for life.

* Sentence passed by the officiating additional sessions judge.

1853.
December 10.
Case of
PORAN SIRDAR BAGDEE
and another.

house to be attacked, under the guidance of one, Mokru, a *mussulman*, who was acquainted with the localities. The approver, Kilas and others, climbed over the wall, and some got on the terrace of the house, and some jumped down and opened the outer gate. *Mussals* were then lighted and the work of plunder commenced. The details of the affair vary in some respects in the two accounts given, but the discrepancies are unimportant and do not affect the credibility of the recital, as a statement of facts.

The master of the attacked and plundered house deposes to the outrage, and asserts that coming across some of the gang in the *mèlè*, he received some blows and was otherwise roughly handled. The chowkeedar of the quarter also bears testimony to the occurrence of the dacoity.

The prisoner Poran Sirdar Bagdee denies the charge and asserts that it has been brought against him by the approver, Kilas Tantee, from malicious motives, in consequence of some differences they had about a woman. He names two witnesses, one to speak to the existence of ill-will between the approver and himself and the fact of his having beaten Kilas on the account in question, and the other to prove that he was in the service of Ramrutton Baboo of Cossipore and collected rents during the day and kept watch at night. The two witnesses cited speak in general terms of the two pleas advanced.

The prisoner Sheikh Emaamdee denies the charge and affirms that this accusation has been falsely and maliciously brought against him, by the approver Hubee Sirdar, for having refused to give him rupees 10 for road expenses. He adds, that he was informed against by the said approver, during Mr. Wauchope's incumbency of the office of commissioner for the suppression of dacoity, and discharged by that officer. He calls two witnesses to prove that he has been an invalid for the last two years, which plea their testimony establishes. He repudiates his confession before Mr. Jackson and denies that he made it. On referring to the officers of the commissioner in attendance at my court, I find that the prisoner *was* discharged by Mr. Wauchope, but not arrested on the information of the approver. He was apprehended by the deputy magistrate of Santipore on suspicion and forwarded to the commissioner.

The confession made by this prisoner before the commissioner for the suppression of dacoity is attested and verified, by two mookhtars, and purports to be a clear admission of actual complicity in the dacoity under notice and participation in three others. It tallies in all essential respects with the statement of the approvers.

The prisoner Bhojah Ooray denies the charge and accuses the approver, Kilas Tantee, of having trumped it up against

him, because he remonstrated with that individual of quarrelling with the concubine of the prisoner Poran Sirdar. One witness appears on his behalf and speaks of him as a man earning an honest livelihood.

On a consideration of the evidence adduced on the trial, I convict the prisoners, Poran Sirdar Bagdee and Sheikh Emamdee of dacoity and having belonged to a gang of dacoits, and recommend that they be transported for life. I also convict the prisoner, Bhojah Ooray, on the same evidence, of being an accomplice in the dacoity charged, and sentence him to fourteen(14) years' imprisonment with labor in irons in banishment and two (2) years more in lieu of corporal punishment, but suspend the execution of such sentence, until the receipt of the Court's orders on the present reference. I acquit him on the 2nd count of the indictment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner No. 14 pleads *not guilty* throughout. No. 15 confessed before the dacoity commissioner, but recanted in the sessions court. The approvers name them as parties, with whom, on other occasions detailed in their statements, they committed dacoities in different places. The defence set up by the prisoners is in no way supported.

I confirm the sentence recommended by the sessions judge.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT

versus

MEAHHJAN MERDHA.

CRIME CHARGED.—Having engaged and taken an active part in an affray, in which one man, Eshan Ghose, received a wound, from the effects of which he shortly afterwards died, and several others were slightly wounded.

Committing Officer—Mr. W. Cockburn, deputy magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 5th November 1853.

Remarks by the sessions judge.—The prisoner pleaded *not guilty*.

The prisoner was implicated in a case of affray with murder, which was tried by me in December 1850 and July 1851, and referred for the final orders of the Court of Nizamut Adawlut, in my letters Nos. 5 and 137, dated respectively 18th January and 2nd August 1851. The prisoner escaped apprehension at the time. The particulars of the case, as recorded in those letters, are as follows : The prisoner formed one of

1853.

December 10.

Case of
PORAN SIR-
DAR BAGDEE
and another.

MOORSHEDA-
BAD.

1853.

December 10.

Case of
MEAHHJAN
MERDHA.

The pri-
soner was con-
victed of affray
with wound-
ing, &c., and
sentenced to
one year's im-
prisonment.

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December 10.

Case of
MEAHZAN
MERDHA.

the parties, who were employed in the service of two different zamindars, named Gouree Sunker Mitter and Kalachand Bose. People on both sides had assembled at a place, called Hurreetolla Mât, armed with *lattees* and swords, one party for the purpose of taking away paddy they had cut from the ground, and the other to oppose them. An affray ensued, and one Eshan Ghose received a severe wound, from which he shortly afterwards died.

The four eye-witnesses, named Ram Jadoo Biswas, Sajoo Halsahana, Mohanund Ghose and Ramlal Biswas, who were examined in this case before me, deposed that an affray took place between the people of Kalachand Baboo and Gouree Sunker Mitter at Hurreetolla Mât, in which Eshan Ghose, a man on the part of the said Gouree Sunker Mitter, received a wound and subsequently died. In that affray the prisoner Meahjan was present. Ramjadoo and Sajoo Halsahana stated that they could not exactly remember what weapon the prisoner had in his hand at the time, but Ramlal Biswas deposed, that he saw the prisoner with a sword, shield and *lattee*, and that his (the prisoner's) hand was bleeding, in consequence of two or three wounds which he had received in the affray.

The depositions which were given by these witnesses on previous occasions were read to, and acknowledged by them; they also recognized the prisoner as the party who was present in the affray.

The prisoner failed to establish an *alibi*.

The case was tried with the aid of Golam Gous, the sudder ameen, and Mudden Mohun Turkalunkar, provincial pundit, who sat with me on the trial as assessors. They convicted the prisoner, one of them of being present and the other being engaged in the affray attended with murder. I concurred in the latter finding, and as the offence does not appear to me to be deserving of the punishment, which, under the law, I am obliged in such cases to award, I refer the case for the final orders of the Nizamut Adawlut, with a recommendation that the prisoner be sentenced to imprisonment with labor for the period of one (1) year, and to pay a fine of rupees 15 in lieu of labor, the same punishment having been already awarded with the sanction of the court to others, who were similarly concerned in the affray.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The particulars of this case will be found at pages 131 and 1160 of Nizamut Adawlut Decisions for 1851. The prisoner escaped apprehension at the time. I concur in the conviction of the prisoner, and sentence him, as proposed by the sessions judge, to one (1) year's imprisonment, and to pay a fine of rupees 15 in lieu of labor.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT
versus

KALEECOOMAR DASS alias KISTODHUN DASS.

CRIME CHARGED.—Committing an affray, attended with homicide and wounding.

CRIME ESTABLISHED.—Being an accomplice in committing an affray, attended with homicide and wounding.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 16th September 1853.

Remarks by the sessions judge.—The prisoner was named in a trial which was held in this court in June 1851, and then evaded arrest.

He has lately been discovered under a feigned name in the district of Pubna.

His presence in the affray has been fully proved by the evidence.

The Court of Nizamut Adawlut, before whom this case was tried, as regarded the prisoners then sentenced by me, noted this Kalcecoomar Dass as having been sworn to as having accompanied the factory coolies to the place where the affray took place.

As the prisoner either has, or will prefer an appeal from my orders, I will not trouble the Court with any further remarks on this well-known trial.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The particulars of the case which gave rise to the affray, in which this prisoner is stated to have taken a prominent part, have been fully detailed in my remarks on the trial of the prisoners Kurumoolah Sheikh and others (see page 1054 of the Reports for 1851.) The prisoner at the time escaped apprehension, he was arrested in the Pubna district and styled himself Kistodhun Dass, but no doubt can exist as to his being the same Kaleecoomar Dass named in the original record.

The pleaders, on behalf of the prisoner, have urged that the evidence of Kurumoolah Sheikh and Bonacharee Haree, who were sentenced by me in this case to seven (7) years' imprisonment and are now undergoing their sentence, is open to much suspicion, that there are discrepancies in the statements of the witnesses, and that the *alibi* has been proved. On the

NUDDEA.

1853.

December 12.

Case of
KALBECOO-
MAR DASS
alias KISTO-
DHUN DASS.

Prisoner
convicted of
affray with
homicide, sen-
tenced to seven
years' impri-
sonment. Ap-
peal rejected.

1853.

December 12.

Case of
 "KALEECOO-
 MAR DASS
 alias KISTO-
 DHUN DASS.

first point I would observe, that Kurumoolah Sheikh, who was wounded in the affray, named the prisoner in his first deposition taken on oath by the darogah immediately after the occurrence, and Bonacharee Haree was a servant of the factory and therefore well able to speak to the prisoner's presence at the affray. They and the police burkundauz, Telookdaree, distinctly testify to his having accompanied the factory people to the place, and Boodhun, also a police burkundauz, deposes to his being amongst those of the rioters who bore off a corpse, which proved to be that of Kismut Khan. There are no material discrepancies in their evidence, which are worthy of notice, and I see no reason to reject it.

I can place no credit in the evidence for the *alibi*. Four days after the affray the prisoner is stated to have filed a power of attorney in the Pubna court, but he did not attest it himself. Had the prisoner been at Pubna, he would have attested, as remarked by the magistrate, the power in person, and not required witnesses to attest his signature after a period just sufficiently long enough to admit of his reaching Pubna from Nonagunge.

It is also urged, that the names of some of the eye-witnesses who deposed to the prisoner's presence in the affray before the magistrate, when first examined and subsequently failed to identify him, have not been entered in the calendar. On this point I would observe, that the magistrate records that attempts have been made to tamper with them since an amicable arrangement between the owners of the factory and Bindrabun Sircar has been brought about, and he had therefore not cited them as witnesses. This explanation seems to me sufficient, as the prisoner himself might, if he pleased, have summoned them on his part. For the above reasons I confirm the sentence passed by the sessions judge and reject the appeal.

PRESENT:
SIR R. BARLOW, BAET., Judge.

GOVERNMENT
versus
SOONDER MYTEE.

CRIME CHARGED.—Perjury, in having, on the 15th March 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy collector, Abdoolah Khan, Bahadoor, that a peon, name unknown, accompanied him from Midnapore to Agrachour, in a civil case, under Regulation VII. of 1799, No. 74, in which Bud-deenath Dass, kutkinadar, on part of Radha Mohun Chatterjea, was plaintiff, and Mugnee Bareek defendant, and in having, on the 3rd May 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Nugwa, Moulvee Waheedun Nubec, that he knew nothing as to whether the aforesaid peon had, or had not, gone to seize the defendant Mugnee Bareek, and in having again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the aforesaid deputy magistrate, that the peon did not accompany him as far as Agrachour. Such statements being contradictory of each other on a point material to the issue of the case.

MIDNAPORE.
December 12.
1853.

Case of
SOONDER
MYTEE.
Prisoner
convicted of
perjury, sen-
tenced to three
years' impri-
sonment. Ap-
peal rejected.

CRIME ESTABLISHED.—Perjury.
Committing Officer—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 29th August 1853.

Remarks by the sessions judge.—The prisoner is charged with perjury, in having made, on solemn declaration, in lieu of an oath, contradictory statements before the deputy collector, presiding judicially in the investigation of a summary suit, and before the deputy magistrate of Nugwa, in whose court the plaintiff in the summary suit was prosecuted for forgery. It is in evidence, that the prisoner deposed on a solemn declaration before the deputy collector, on the 15th March 1853, that a peon from the collector's office, entrusted with the service of a process issued under the provisions of Regulation VII. of 1799, accompanied him (prisoner) as far as Agrachour, and that on the 3rd and 4th May following, he, on solemn declaration, denied that he knew any thing about the said peon and that he accompanied him as far as Agrachour. It is also in evidence, that the defendant, in the case in which these

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Case of
WONDER
MYTER.

conflicting statements were made, was charged with prosecuting a false suit before the deputy collector, under a fictitious name; prisoner on the 3rd and 4th May declaring that no peon accompanied him, was clearly to defeat the ends of justice, by leading the court to suppose that no summary suit had been instituted, that no process could therefore have been issued, and that consequently no peon could have accompanied him: the prisoner thus wilfully and falsely deposing on points which were material to the issue of the case. The practice of bringing fictitious summary suits is very prevalent in this district. A party having a quarrel with neighbours, an enmity to gratify, personates a talookdar, files a petition in the collector's court, and causes a *dustuk* to be issued, armed with this document, and in collusion with the peon entrusted with the service of it, the plaintiff proceeds to arrest his enemy. The latter has only the alternative of being dragged miles from his house to the sunder station, to await the doubtful result of enquiry into his case, or to meet the unjust demands of the plaintiff and his creature, the peon. He adopts the latter course, and the plaintiff's end is accomplished. The case in which the prisoner gave evidence and perjured himself is one parallel in its features to that above stated. He was no doubt privy to the whole of the illegal proceedings of Beeroo Mana, the plaintiff, in the fictitious summary suit, and the presumption is that his (prisoner's) depositions were deliberately and falsely made at Beeroo Mana's instigation. The assessors declare the prisoner guilty of the charge, in which finding I concur. The prisoner is sentenced as indicated in the statement.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner's deposition before the deputy collector, and that given by him before the deputy magistrate, are directly opposed one to the other.

As a witness in the first court, he swore on the 15th March 1853, that a peadah had accompanied him to serve notice on Mugnee Bareek, whereas before the deputy magistrate, he, on the 3rd and 4th May idem, first said he did not know whether a peadah went to apprehend the said Mugnee, and on being further questioned, deposed no peadah whatever went. These depositions are verified by the mohurirs who wrote them. The institution of fictitious summary suits appears, by the sessions judge's remarks, a frequent practice in the Midnapore district, and it may have been the prisoner's object to forward such a case. Whether it was so or not, it is clear that the prisoner has perjured himself, and I concur in the conviction and sentence passed upon him.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT, GOBIND SINGH AND PHERUN SINGH.

versus

NIRPUT (No. 18,) KEHUR (No. 19,) CHEGUR (No. 20,) TOOFANEE (No. 21,) NEMO (No. 22,) ALUM (No. 23,) BECHUN (No. 24,) AND JOWAHIR (No. 25.)

CRIME CHARGED.—Highway robbery of property valued at rupees 10-3.

CRIME ESTABLISHED.—Theft with personal injury of property valued at rupees 10-3.

Committing Officer—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhau-gulpoore, on the 21st July 1853.

Remarks by the sessions judge.—Prisoners all plead *not guilty*. Gobind was bathing in a *nuddee* about 8 A. M., some 10 *russees* from the village of Kutowna, when he was attacked by a body of men, armed with matchlocks and *lattées*, who took away his gold ornament from his neck and his clothes. Pherun was coming towards the *nuddee*, when he heard a noise and ran away, and saw all the prisoners, nine men, surrounding Gobind and snatching away his property. They had four guns, a hatchet, an axe, and pellet-bow. Jowahir (prisoner No. 25) had hold of Gobind round the waist, Kehur was cutting the necklace from his neck. Seeing this, he (Pherun) came to Gobind's assistance, when Jouahir and Chegur struck him with their matchlocks, and snatching his *lotah* and *chudder* ran off. Witnesses Nos. 1, 2 and 3 were also going to bathe and saw the transaction from about a *russee* distant: it was on their coming up that the robbers made off. The police at Mulleapore thannah, about a *coos* distant, were at once apprized by Pherun of what had happened, and being put on the scent, followed prisoners so closely into the jungle, that seven of them were apprehended the same day, the eighth the following day. The gold neck ornament was found in Kehur's *tosdan*, and a stolen *dhotee* on Nirput. Both prosecutors and witnesses Nos. 1, 2 and 3 identify all the prisoners as those concerned in the attack and robbery; witnesses Nos. 6, 7, 8 and 9 attest finding the stolen property on prisoners Nos. 18, 19, 23 and 25; witnesses Nos. 10, 11, 12 and 13 to suspicious livelihood of all the prisoners.

Prisoners say the case is got up against them by Rajah Jymungul Singh, because they left his territory for that of Neerblye Singh; that prosecutors are one with Rajah

BHAUGUL-
PORE.

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Case of
NIRPUT and
others.

The prisoners charged with highway robbery were convicted by the sessions judge of theft with violence. In appeal the conviction was altered to assault with plunder, and the sentence reduced to three years' imprisonment.

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Case of
NIRPUT and
others.

Jymungul ; that when the highway robbery, of which they are accused, is stated to have occurred, they were out hunting, and had gone down to the *nuddee* to drink. Gobind and Pherun and others, in all some nine men, were bathing there and abused them. They returned the abuse and then went again to the jungle to hunt. When the accusation was made at the than-nah against them, the gold ornament was put into the *tosdan* to give weight to the accusation : the *dhotee* taken from Nirput is claimed by Nirput as his own. They state further, that they had killed a deer and given it to Neerbhye Singh, on which Jymungul Singh said he would get them imprisoned ; that the women were turned out of Alum and Jowahir's house, and the *lotah* and *chudder* placed there to strengthen the accusation against them. Their witnesses can say nothing in their favor.

The jury bring in a verdict of *guilty* of the crime charged against all the prisoners, in which I concur.

The evidence for the prosecution is clear and consistent and the prosecutors and witnesses most respectable. I entirely disbelieve the story of prisoners, as regards the enmity imputed to Rajah Jymungul Singh, of which they have not adduced a particle of proof. They have no ostensible means of livelihood, and have, some of them, Nos. 18, 19 and 20, been before had up on suspicion. There is nothing aggravated in the case to make it amount to dacoity, nor does it, in my opinion, amount to more than theft with personal injury, of which I convict them ; and there being no aggravating circumstances, calling for heavier punishment, I sentence all the prisoners, from Nos. 18 to 25 inclusive, to five (5) 'years' imprisonment with labor in irons. The stolen property having been all recovered, there is no call for fine under Act XVI. of 1850. It will be restored to the prosecutors.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—There can be no doubt, that the prisoners were guilty of violence towards the boy Gobind and the witness Pherun ; and it is not improbable, that some of them helped themselves to some of the property said to have been stolen, but taking into account the time when, and place where, the assault occurred, I cannot but think that the case for the prosecution has been somewhat over-drawn. The time was broad day, the place a public *ghaut*, where people bathe ; that at such a time, and in such a place, a band of men, many of whom must be known to the villagers, inasmuch as the prisoners live at no great distance, should designedly commit a robbery, is by no means probable.

My impression is, that from some cause, not shown, the parties got into a quarrel at the *ghaut*, and that during the scuffle, some of the prisoners carried off the property. I concur

in finding the prisoners *guilty*, but I think their crime is rather assault and plundering property than theft with personal injury.

Under all the circumstances of the case, and with reference to the foregoing observations, I reduce the sentence to imprisonment for three (3) years with labor, commutable to a fine of rupees 15 each, payable within fifteen days.

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Case of
NIRPUT and
others.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

NAZIROODDEE SIRDAR (No. 1,) RUZZA SIRDAR (No. 2,) DHUNNAE SHEIKH (No. 3 APPELLANTS,) TO-RABDEE SHEIKH (No. 4,) SOLIM PERAMANICK (No. 5,) AND BAWOOL SIRDAR (No. 6.)

CRIME CHARGED.—Nos. 1 and 2, 1st count, dacoity in the house of Sooltan Shah; 2nd count, knowingly receiving plundered property; 3rd count, being accessories before and after the fact, and 4th count, privity. No. 3, 1st count, knowingly receiving plundered property and 2nd count, privity. Nos. 4, 5, 6, 1st count, being accessories before and after the fact to the aforesaid dacoity, and 2nd count, privity.

RAJSHAHYE.

CRIME ESTABLISHED.—No. 1, privity to dacoity; Nos. 2 and 3, knowingly receiving property plundered in dacoity; Nos. 4, 5 and 6, privity to dacoity.

Committing Officer—Baboo Gopaul Loll Mitter, deputy magistrate of Nattore.

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Case of
NAZIROOD-
DEE SIRDAR
and others.

Conviction
and sentence
passed by the
sessions judge
on a charge of
dacoity up-
held in appeal.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 30th August 1853.

Remarks by the sessions judge.—This was a simple case of dacoity, according to the owner of the house, committed by a gang of 10 or 15 dacoits, who, on entering his house, first seized and beat him, and then made him show them his money, which he did, *viz.*, 62 rupees in an earthen pot and 200 rupees buried under the ground: he then fled, and they plundered the house of all worth taking away. He recognized Nos. 1 and 2 among the dacoits. (Two other witnesses did the same, but I do not think their evidence can be relied on.) Nos. 4, 5 and 6, who were servants of Nos. 1 and 2, confessed both before the deputy magistrate and darogah, that on the night of the occurrence several persons (whom they named) came to their master's house, and after smoking and consulting together, all went out with sticks, and towards the morning they returned with several *tals*, cooking utensils, and native ornaments. The latter they divided among them but the *tals* were left on a

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Case of
NAZIROOD-
DER SIRDAR
and others.

machau in a bag ; that on the dacoity being known, No. 2 took the *tals* to the house of No. 3, where they were found. A *sutrunjee*, which the prosecutor recognized as being his own, was found in the house of No. 3, and seven *tals* in a hollow, concealed in the water near the prisoner's house. The prisoner admitted having received them from No. 2. No. 2 claimed them all but one *tal* which he said belonged to a widow who was employed in the house ; and the evidence for the defence established her right to *tal* No. 6, but by no means proved that the others belonged to the prisoner. The very fact of the *tals* being concealed in a hollow, under the water, is presumptive proof that he knew they had been obtained by robbery or theft. It is probable that in the hurry to remove them, the widow's *tal* got mixed up with the rest. I have, therefore, convicted Nos. 2 and 3 of knowingly receiving plundered property, and the other four prisoners of privity to dacoity, and sentenced them as herein stated. Had Nos. 3, 4 and 5 been admitted to give evidence, Nos. 1 and 2 might have been convicted on the 3rd count. The trial was held under Act XXIV. of 1848 and the Court's Circular Order of the 5th July 1844.

Sentence passed by the lower court.—No. 1, to two (2) years' imprisonment without irons, and to pay a fine of rupees 50 on or before the 14th September 1853, or in default of payment to labor until the fine be paid or the term of his sentence expire ; No. 2, to five (5) years' imprisonment with labor and irons ; No. 3, to three (3) years' imprisonment with labor and irons ; Nos. 4, 5 and 6, to one (1) year's imprisonment without irons, and to pay a fine of rupees 25 on or before the 14th of September 1853, or in default of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Prisoners Nos. 1, 2 and 3 have appealed. I hold the conviction to be good, even on the admissions of the prisoners themselves. No. 3 admits that to oblige his friends, the other two, he permitted them to conceal the property on his premises, but asserts that he did not know that the property had been procured by dacoity. No. 2 admits having taken the property to the house of No. 3, and No. 1 says that it belongs to him and No. 2 jointly. These admissions, coupled with the evidence referred to by the sessions judge, are sufficient for conviction as recorded.

The sentence is confirmed.

PRESENT:

J. DUNBAR, Esq., }
 AND } *Judges.*
 H. T. RAIKES, Esq., }

GOVERNMENT

versus

BUKKUS SINGH RAJPOOT.

CRIME CHARGED.—Perjury, in having, on the 4th March 1853, deposed under a solemn declaration taken instead of an oath, before the sessions judge, upon Hurnath Singh defendant's asking him “whether Chutter Sing was his own brother or not?” he replied, that he was not his own brother. “In the 3rd generation he is my brother.” On next being questioned by the sessions judge as to his father's name, he replied, “Bustee Roy;” and on again being questioned as to the name of Chutter Singh's father, he answered, that in consequence of three preceding generations, he could not remember. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer—Mr. F. C. Fowle, magistrate of Behar.
 Tried before Mr. T. Sandys, sessions judge of Behar, on the 16th November 1853.

Remarks by the sessions judge.—On the trial of Baboo Hurnath Singh and three others, charged with affray attended with culpable homicide of Faqueer Singh and others, on the prosecution of Nagur Singh Babhun and others, referred to the superior Court and determined by them, as per their proceedings of the 25th June last, the prisoner Bukkus and one Chutter Singh appeared as witnesses for the prosecution, when their depositions, under the usual form, named one Bustee Roy as each one's father. In the course of cross-examination by the defence, it was elicited from Chutter, that Bukkus was his own brother; and which, as shown in the indictment, Bukkus swore was not the case.

The matter was referred to the magistrate for enquiry, which being incompletely conducted, in the first instance, caused some delay, in course of which Chutter died. The darogah's local enquiry of 27th September last, No. 49, produced Purtab Singh, (witness No. 3,) Chutter's son, and five others, (Nos. 4 to 8 of the calendar,) who deposed to the following particulars, that the prisoner Bukkus, Chutter deceased, and Runghoo Singh absent as a sepoy, were three brothers, sons of Bustee, the two former being by one mother and the latter by another.

BEHAR.

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Case of
BUKKUS
SINGH RAJ-
POOT.

Prisoner ac-
quitted of per-
jury, in having
denied his re-
lationship to
another wit-
ness in the case,
it not being
shown that the
statement, as
affecting this
witness' cre-
dibility, was
material to the
issue of the
case.

1853.

December 13.

Case of

BUKKUS
SINGH RAJ-
POOT.

The prisoner pleading *not guilty* alleged that it was Chutter who had perjured himself. Bustee was his father, and Bundhoo his grand-father, and he told the magistrate he knew nothing of Chutter's parentage. Before this court, however, he recognized Purtab as Chutter's son. He called witnesses Nos. 9 to 11 of the calendar, who deposed before the magistrate, that Bukkus and Chutter's fathers were both called Bustee, but that Bukkus's grand-father's name was Bundhoo and Chutter's Bodee. He declined their testimony before this court, and summoning three others, witnesses Nos. 12 to 14, they repeated much the same story.

The *futwa* of the law officer, deeming the evidence as to the relationship unsatisfactory, and the charge of perjury as on a point immaterial to the issue of the case, acquits the prisoner.

The latter point has been sufficiently over-ruled by several of the superior Court's precedents, sentencing witnesses for having falsely deposed to relationship, in order to make themselves out disinterested witnesses, and the offence in the present instance is the greater as committed in reply to a prisoner's question. On the former I differ with the law officer, because I cannot perceive how the evidence could be more satisfactory than it is. The relationship is proven by the evidence of Chutter Singh's son, Purtab, and five other witnesses, corroborated by the darogah's local enquiry of 27th September last, which show the prisoner's alleged grand-father, Bundhoo Singh, to be a supposititious personage, whilst the testimony of the prisoner's witnesses is manifestly tutored to get him out of the scrape, and before this court is proffered only by connections by marriage, who pretend to know nothing of Purtab and his relations, although the prisoner himself had duly recognized Purtab as Chutter's son. Chutter's own statements, regarding the relationship, were originally, naturally and truthfully elicited from him under cross-examination, and to the best of my judgment have been fully confirmed by all that has followed. I accordingly convict the prisoner of perjury and would sentence him to three (3) years' imprisonment with labor and in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.)—It appears to us unnecessary to give any opinion on the evidence adduced to prove the point of relationship, as we find nothing on the record to show that the perjury charged was on a point *material* to the issue of the case. When a witness, on his oath, denies relationship in order to give more weight to his evidence, he is held, and rightly held, by this Court, to be *guilty* of perjury, but it is not shown that such was the object of the prisoner, in denying

that Chutter Singh was his own brother; and so far as the principal parties in the case of affray were concerned, it does not seem to have been a matter of any consequence whether they were or were not brothers. We therefore acquit the prisoner.

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December 2.
Case of
BUKKUS
SINGH RAJ-
POOT.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT, PHEBUN SINGH AND GOBIN SINGH
versus
MEGHUN.

CRIME CHARGED.—Highway robbery of property valued at rupees 10-3.

CRIME ESTABLISHED.—Theft, with personal injury, of property valued at rupees 10-3.

Committing Officer—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 21st July 1853.

Remarks by the sessions judge.—This case is the same as that detailed in case No. 7. Meghun (prisoner) is convicted of theft with personal injury, but without any aggravating circumstances, and sentenced to imprisonment with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—I concur with the sessions judge and the jury in finding this man guilty. For the reasons stated, however, in the order passed on the appeal of the eight prisoners previously brought to trial, I do not view the case in the same aggravated light as it has appeared to the sessions judge. It appears to me in fact rather a case of assault and plunder than of theft with personal injury.

I reduce the term of imprisonment to three (3) years with labor, commutable to a fine of rupees 75, payable in 15 days.

BHAUGUL-
PORE.

1853.
December 13.
Case of
MEGHUN.
Prisoner
convicted of
theft with per-
sonal injury,
sentenced to
five years' im-
prisonment.
In appeal sen-
tence reduced
to three years.

PRESENT :

SIR R. BARLOW, BART.,
 AND
 A. J. M. MILLS, Esq., } Judges.

GOVERNMENT

versus

NGA POO (No. 1.) NGA THUN (No. 2.) MUSST. MEE SHAMMA (No. 3.) AND NGA TSAY (No. 4)

ARRACAN.

1853.

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Case of
NGA Poo and
others.

The female prisoner hired two of the male prisoners to assassinate the deceased, who had been a paramour of her defunct husband and lived in the same house with her. These three prisoners were sentenced capitally.

A fourth prisoner, who lent his knife to the assassins to commit the murder, was transported for life.

CRIME CHARGED.—Wilful murder of Musst. Mee Powa.

Committing Officer—Captain C. Sharp, principal assistant to the commissioner at Ramree.

Tried before Captain Henry Hopkinson, commissioner of Arracan, on the 1st November 1853.

Remarks by the commissioner.—On the 19th September 1853, in the evening, or about 6 p. m., Nga Tsa, the rwagoung of Tsa-kan-gyee, in the criminal jurisdiction of the Aeng thannah, came to that thannah and reported that a Khyeng woman, of the name of Mee Powa, a widow, had been stabbed to death on the preceding night (that is, the night of the 18th September,) as she lay asleep in her house at Gundulwon, a village in the Bakangyee rwagoungship and about a day's journey from the Aeng thannah. On receipt of this information, the darogah forthwith hastened to the spot, and arriving there, on the morning of the 20th September, proceeded to make inquiries into the cause of the murder and of the discovery of its perpetrators, and to hold the inquest. He ascertained that the murdered woman, Mee Powa, the witness (Musst.) Mee Baya, and prisoner No. 3, Musst. Mee Shamma, were together in one house on the night of the murder. They had indeed been living together for some time previously. That on that night the witness Mee Baya was sleeping with the deceased, when about 12 p. m. two men broke into the house, one of whom, being armed with a dagger, stabbed the deceased; but they allowed the witness Mee Baya to escape. No one could then tell who these men were, or whence they came: it was supposed they were robbers. Some five stab-wounds were found on the person of the deceased, and from the evidence of the inquest, it would seem that two at least must have been mortal injuries, as they are described to have been inflicted under the left ear, cutting through into the throat, so that the carotid must have been severed—in short, there could be no doubt as to the connection between the wounds and the death of the deceased. The assassins took away with them various articles of trifling value belonging to the deceased.

The local investigation completed, the darogah carried prisoner No. 3, Mee Shamma, and the witness Mee Baya to the Aeng thannah.

Some remarks made by the prisoner Mee Shamma, after her arrival at the thannah, in reference to the murder, attracted attention, and being further questioned, the whole story came out, and she confessed that the deceased, Mee Powa, had been put to death at her instigation by prisoners Nos. 1 and 2, Nga Poo and Nga Thun, and that she had procured their agency through her son-in-law, Nga Tsay (prisoner No. 4.)

Acting on this confession, which was made on the morning of the 23rd September, the darogah again started off in quest of the prisoners Nos. 1, 2 and 4, and between the evening of the 23rd and the morning of the 24th September had apprehended all three at the same time. The wearing apparel which had been taken from the house of the deceased, Mee Powa, was found part in the possession of No. 1, part in the possession of No. 2.

The knife or dagger, which had been used to kill the deceased, was also found in the house of prisoner No. 2; it is in make and shape of the kind the Burmese ordinarily carry about with them, alike for innocent as for unlawful purposes ; a short stout blade, about an inch broad, six inches long, and set in a bone handle three inches long, and pointed so as to allow of a thrust being dealt with it. The confessions show, that this knife was given by prisoner No. 4 to prisoner No. 1 to commit the murder with.

On the 25th September, being then in custody at the Aeng thannah, the prisoners made a full confession of their guilt, corroborative in every particular of the account which the prisoner No. 3, Mee Shamma, had previously given.

All the prisoners adhered to, and repeated before the magistrate the confessions they made at the thannah, and they confirmed these confessions on trial before the sessions court.

Mee Shamma related that she had been married to one Nga Poukkay, who becoming afterwards enamoured of the deceased, Mee Powa, a niece of his, married her also and neglected Mee Shamma. This treatment excited in Mee Shamma the bitterest enmity towards the deceased, but so long as Nga Poukkay lived, she could do nothing : two years ago, however, Nga Poukkay died, and from that day, until her long cherished revenge was gratified, she had never ceased to compass the death of Mee Powa. After Nga Poukkay's death, Mee Shamma and Mee Powa occupied the same house. In September last, Mee Shamma's son-in-law, Nga Tsay (prisoner No. 4,) brought prisoner No. 2, Nga Thun, to the house, and with him Mee Shamma had frequent consultations as to how the deceased was to be made away with. Nga Thun was willing enough for

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Case of
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others.

the bloody deed, nay, made several tentatives towards its execution, but the time or circumstances never proved favorable for the purpose. At last, the day before the murder, Mee Shamma having sent her son-in-law, the prisoner No. 4 Nga Tsay, to bring him Nga Thun, (No. 2,) came to her village, accompanied by the prisoner No. 1, Nga Poo. Mee Shamma put them both into an empty house for the day and sent them food through Nga Tsay and when night came, and Mee Powa and the witness Mee Baya had gone to sleep, she went and called them up. The party halted under the house, then Mee Shamma went first up into it and covered over the dog with mosquito curtains lest by barking he should awake the sleepers. Nga Thun and Nga Poo followed, and Nga Poo arrived with the dagger, stabbed Mee Powa as she slept, Nga Thun holding her down. Mee Powa struggled a little, uttered one or two words in the Khyeng language, and expired. Mee Shamma allowed the prisoner No. 1, Nga Poo to carry out all the property of the deceased he could find, and she herself left the house and went towards the jungle, where she found the witnesses Nga Tsay, Nga Loon, and Mee Baya.

The foregoing is the substance of Mee Shamma's confession, and so far as their joint action is concerned, it is exactly confirmed by the confession of the prisoners Nos. 1, 2 and 4.

Prisoner No. 1, Nga Poo, states, that No. 2, Nga Thun, opened the business to him some two or three months before the murder was committed. Ten rupees was to be paid in advance and more after the job was done. Confessary did not know Mee Shamma at the time, but he agreed to the proposal. On three or four previous occasions, they had arranged to make the attempt, but the opportunity was always unfavorable. At length, on the 18th September last, just before the evening (or afternoon) meal, Mee Shamma's son-in-law, Nga Tsay (prisoner No. 4,) came and called the confessary and Nga Thun (No. 2,) and the three got into a small boat and went off together. They stopped first at an old deserted village, close to where Mee Shamma lives. Here Nga Tsay first giving the dagger with which the murder was committed, to Nga Thun (No. 2,) went on and told his mother-in-law of their arrival. He returned shortly after, and brought them some rice. Nga Tsay then left them, about 7 p. m. Confessary and Nga Thun (No. 2) hid their boat away in a small creek and went to Mee Shamma's village. Mee Shamma met and showed them into an empty house, near that which she and the deceased occupied. Mee Shamma left them there, saying she would return by and by and talk the business over; in effect she came back shortly after and gave them *pân* and tobacco; once more, and for the third and last time, Mee Shamma returned, and it was now to tell them that Mee

Powa lay asleep near the fire place "with her feet to the east and the head to the west, and near her sleeps Mee Baya. You go now, I will cover the dog up and keep him quiet, and be responsible for the issue." Confessary and Nga Thun (No. 2) then went into the house, to where Mee Powa slept: it wanted a little to midnight. Nga Thun gave the first stab with the dagger and then handed it over to the confessary, who stabbed the deceased several, but he is not certain how many times. She muttered two or three words in her own language and died; the other inmates fled. Confessary and Nga Thun then came down from the house to Mee Shamma, who gave them out the property of the deceased: afterwards they returned to their boat, and went to Nga Thun's house. Nga Tsay (prisoner No. 4) gave them rupees 5 a piece. Confessary has lately emigrated from Burmah, driven across the frontier by starvation; want compelled him to the commission of the crime; he knows that in Burmah the penalty attaching to it would be death, unless he were able to ransom his life by the payment of a heavy fine.

The confession of Nga Thun (No. 2, prisoner) is an exact counterpart of Nga Poo's, which has just been detailed up to the instant of the murder; and except as to the part he (Nga Thun) played in its actual commission, he has invariably denied that he ever used the dagger upon the deceased, and he would now have it that he did not even touch her, his principal anxiety being to get Mee Baya (witness No. 10,) who is a relative of his, out of the way; yet, in his thannah confession, he admitted that he struck the deceased with a heavy bamboo stick. He first received rupees 10 from Nga Tsay (prisoner No. 4,) which he divided equally between himself and Nga Poo; a subsequent sum of rupees 5, which he also received as blood-money for killing the deceased, he had not time to divide before he was apprehended. Nga Poo (prisoner No. 1) gave him the dagger two days after to return to Nga Tsay (No. 4,) and so it happened to be found in his house. It was about the 3rd July last, that Mee Shamma first sounded him about murdering the deceased, and at the end of July, or in August, he communicated the design to Nga Poo (prisoner No. 1.)

Nga Tsay (prisoner No. 4) states that he is son-in-law of Mee Shamma; by her direction, on the day of the night preceding the murder, he went to fetch the prisoners Nga Thun and Nga Poo; he brought them to an old deserted Khyeng village, about one hundred and fifty yards distant from the place where Mee Shamma lives; he gave Nga Thun the dagger with which the murder was committed, expressly that it might be used to kill the deceased; and after her death he paid into Nga Thun's hands the sum of rupees 15, which he had received from Mee

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Shamma as the price of the murder. Nga Tsay has his own mother alive, and all his earning he gives her ; he did not tell his mother how his mother-in-law was employing him ; he knew perfectly well, when he gave the knife to Nga Thun, that the murder was to be committed that night.

I pass over the evidence of the witnesses to the apprehension of the prisoners and to the finding and identity of the property taken from Mee-Powa's house, as it is not material to the case : the description given by the witnesses to the *sooruthal*, of the wounds found on the person of the deceased, has also been embodied in a previous paragraph, and I proceed, therefore, to a consideration of the circumstantial evidence of this. The deposition of the witness, (No. 10, Mee Baya,) is the most important—indeed, the only testimony of any real importance in the case. I should say, that she might properly have been entered in the calendar as a witness to the fact ; she states that her house is distant about 30 yards from that in which the deceased, Mee Powa, and Mee Shamma lived, but for a month before she had been sleeping with Mee Powa, and was so sleeping on the night of the murder, without any intervening space between the two. Some time about midnight two men entered the room and seized hold of Mee Powa ; witness awoke, started up in alarm, and rushed out of the house to the neighbouring jungle, or rather she went first to her own house, and taking the witnesses Nga Loon and Nga Tsay, her nephew and son, then went to the jungle and stopped there till morning ; then, on re-entering the village, she heard of the assassination of Mee Powa, and going to Mee Powa's house she found her lying there stabbed to death. Witness did not recognize the assassins, but noticed that one of them had something like a dagger in his hand. The noise of Mee Powa's cries awoke her at the time of the murder ; the prisoner No. 3, Mee Shamma, was sleeping in the house that night, Mee Shamma lived with Mee Powa. No one seized or took hold of witness or assisted her in getting away.

There is no other evidence material to the case.

After consideration of the evidence of the confessions made by the prisoners at the thannah, and before the magistrate, as well as in this court, nor overlooking the matter urged by way of exculpatory plea by prisoner No. 2, Nga Thun, at the sessions trial, I am of opinion, that the prisoners No. 1, Nga Poo, No. 2, Nga Thun, and No. 3, Musst. Mee Shamma, are, on their own confessions, the evidence going no further than to establish the *corpus delicti*, guilty of the murder of the deceased Mee Powa. No. 1, Nga Poo, and No. 2, Nga Thun, as principals in the first degree and No. 3, Musst. Mee Shamma, as a principal in the second degree, for she avows her

presence at the actual perpetration of the fact, and she gave assistance to the perpetrators by covering up the dog; and I am further of opinion, that the prisoner, No. 4, Nga Tsay, is also on his own confession guilty as an accessory both before and after the fact to the murder of the aforesaid Mee Powa, though he doubtless acted under the influence of his mother-in-law, the prisoner Mee Shamma.

I can find no extenuating circumstances attending the crime, which has been proved against the prisoners, Nga Thun, Nga Poo and (Musst.) Mee Shamma, nor can I make any discrimination as to the degree of guilt which respectively attaches to them. I can scarcely allow that Nga Thun is less culpable, because though he suborned Nga Poo, though to him was paid the price of blood, though he actively participated in the murder, it would appear by what he alleges in his own favor, that it was not his hand that struck the fatal blow. With reference to Mee Shamma again, I am equally unable to urge the circumstance of her having been only present, aiding and abetting at the commission of the fact, and that she was not an actual perpetrator, as a reason for a more lenient judgment, when I consider that she took the whole lead in the designing of the offence, and that the assassins were her agents doing her bidding for her money. A more deliberate and cold-blooded murder was never plotted and achieved; on the one hand it was imagined and arranged by a woman, for the gratification of a jealousy which had long outlived its cause and origin, and on the other, it was executed by men for a paltry bribe, less in amount than they could at the time have earned by a fortnight's honest labor.

There yet remains one circumstance, which, in contemplation of the possibility of its operating in the prisoner's favor, I am imperatively called upon to notice. The prisoners Mee Shamma and Nga Thun (and so indeed the prisoner No. 4, Nga Tsay) are Khyengs, who, for the most part, occupied the least civilized parts of Arracan, speak a different language from, and are, as a people, less advanced than the Arracanese. But I cannot conscientiously urge this fact, as a reason in the present case for any remission of punishment; since although an allowance has been sometimes made, I find, for persons convicted of murder or other heinous offence, where they have belonged to some of the ruder races of India, this I conceive has been when the crime was referrible to, or directly induced by the state of society in which those persons lived, when the feeling of prejudice or custom of the community extenuated or sanctioned, approved, or even required its commission; and no such palliatives can be urged here. The offence committed is not because of any accidents of birth or position, but in

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despite of, or rather in advance of them. Paid assassins have, unfortunately perhaps, been found in every stage of society, but the revenge taken by the prisoner Mee Shamma is less characteristic of the impulsive action or passion of the barbarian, than of the constancy and steadfastness of purpose of the civilized man, who has been disciplined to restrain and conceal his designs, and to defer their accomplishment until a time arrives, when they may be executed with sure and certain effects. I may add, that in fact the prisoners Nos. 2, 3, and 4 are less savage than the Khyengs generally, in so much as that they have been in constant association with Arracanese, and all three speak Burmese fluently.

It now only remains for me, in accordance with the conviction I entertain of their equal and most heinous guilt, to recommend a capital sentence on the prisoners No. 1, Nga Poo, No. 2, Nga Thun, and No. 3, Mee Shamma. I cannot, on judicial grounds, seek any commutation of punishment, and I am doubtful of my competency to recommend it on any other—nor indeed do I know of any other, unless it be, that I think that the end of all human punishment, precaution against future offences of the same kind, might possibly in this instance be secured by confining the execution of the capital sentence to the prisoner No. 1, Nga Poo, the actual slayer, and commuting it as to the two others to sentence of imprisonment with hard labor and irons in transportation beyond sea for life; but this is a question which I barely suggest for the merciful consideration of the Court.

I beg to recommend that the prisoner No. 4, Nga Tsay, be sentenced to imprisonment for seven (7) years with hard labor and in irons.

On the magistrate's proceedings in that case, I had occasion to remark, that the witnesses, Nos. 1 and 2 of the calendar, Kurreem Alee and Abdoole Suttoo, to the finding and identity of the property, are not the witnesses named in the darogah's chulan to the same fact. At the same time their evidence is discrepant and inconclusive; that as the case went, proved of little consequence; but it might have been otherwise had the prisoners repudiated their thannah confessions; the finding portions of the wearing apparel and effects of the murdered woman in their possession would have been most material evidence; so neither were the subscribing witnesses to the thannah confessions sent in. The magistrate has explained the absence of all these witnesses to have arisen from the fact on their being employed on the public service with the troops in the Aeng Pass, that is scarcely a sufficient reason he should have released them, or at least he might have recorded in his proceedings why they had not been summoned. The darogah has not included the articles No. 16, (the dagger,) 17 and 18

in his list of property found on the persons, or in the possession of the prisoners. The apprehension of the prisoners Nos. 1, 2 and 4 is erroneously stated by the darogah, and in the calendar, to have been made on the 25th September. This is wrong. From the evidence of the witnesses, and the narrative of the darogah's proceedings leads to the same conclusion, it is evident that they were apprehended in the course of the 23rd September, or between the afternoon of the 23rd and the morning of the 24th September. Their confessions bear date the 25th.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. A. J. M. Mills.)—This murder was deliberately planned and executed.

The prisoners all confessed in detail before the commissioner of Arracan. Nos. 1 and 2 admitted the receipt of rupees 5 each to commit the murder, which had more than once before been attempted but failed. On the 18th September, prisoner No. 3 brought them to a house close to that in which deceased slept, having called them through her son-in-law (No. 4.). After a while she returned to the prisoners Nos. 1 and 2, described the position in which deceased was sleeping, and took them to the spot where deceased was murdered by them, as particularized in their confessions. No. 3 confesses that since the death of her husband, some two years previous, she had steadily kept in mind the scheme to have deceased murdered. Jealousy was the cause, her husband having formed a *liaison* with the deceased, whom he had brought to his house. She describes her having preceeded the two murderers to keep the dog silent, and alleges she entertained them through the agency of her son-in-law. Prisoner No. 4 confessed also that he acted under the orders of No. 3, in the affair, and admitted his foudary confession to be voluntary, in which he stated that he gave his knife to the prisoner No. 2, for the purpose of the murder.

Ignorance cannot be pleaded on the part of the prisoners, for they have stated in their answers that they are fully aware of the responsibilities which attach to their offence, even though committed in their own country.

With reference to what is stated by the commissioner of Arracan, in the 20th paragraph of his report, we would observe that it is impossible on any just grounds to draw a distinction between the character of the offence committed by the prisoners, Nos. 1, 2 and 3, such as would warrant the Court in awarding different degrees of punishment to the said prisoners.

The female prisoner, (No. 3,) for two years ever since the death of her husband, entertained her feelings of jealousy and effected her purpose, through her hired assassins, of murdering the deceased, with whom she was living in the same house, after

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repeated failures on former occasions. We can draw no distinction between the instigator and the perpetrators of so deliberate and malicious a murder. The commissioner would recommend a capital sentence, but at the same time suggests that the end of all human punishment, precaution against future offences of the same kind, might possibly in this instance be secured by confining the execution of the capital sentence to the prisoner No. 1, the actual slayer.

We are unable to fix upon any circumstance in this case, which would enable us to draw any distinction as to the extent of the guilt of the prisoners Nos. 1, 2, and 3. All of them had compassed the murder of the deceased on previous occasions, and all were active, deliberate, and immediately connected with the murder committed on the night of the 18th September. The long-cherished malice of the female prisoner (No. 3,) which provoked, and the mercenary feelings which actuated the prisoners Nos. 1 and 2 to the commission, call for, in our judgment, exemplary punishment. We feel it our duty, therefore, to sentence the three prisoners, Nga Poo (No. 1,) Nga Thun (No. 2,) and Musst. Mee Shamma (No. 3,) to death.

The prisoner No. 4, son-in-law of No. 3, lent his knife, knowing, as he confesses, it was to be used in the murder. He states that he did this by order of his mother-in-law: such a plea of course cannot avail him. He was an accessory before the fact in the eye of the law.

The sentence of seven (7) years, proposed by the commissioner, we consider quite insufficient, and therefore award imprisonment for life in transportation in this case.

PRESENT:
H. T. RAIKES, Esq., Judge.

GOVERNMENT AND SOKUR ULLA
versus

JUSMUT ULLA SIRDAR (No. 4, APPELLANT,) CHAN-
DOO NOSYA (No. 5,) ALABUX (No. 6,) BHADOO
DAS (No. 7,) AND ALEE NOSYA (No. 8, APPELLANT.)

CRIME CHARGED.—1st count, the prisoner No. 4, is charged with the wilful murder of Zeemut Ulla, the son of the prosecutor, Sokur Ulla.—2nd count, all the prisoners are charged with committing a riot and killing Zeemut Ulla, and severely wounding Sokur Ulla.—3rd count, all the prisoners are charged with being accomplices to the 2nd above-mentioned crime.

CRIME ESTABLISHED.—No. 4 riot and culpable homicide of Zeemut Ulla; No. 5 riot and severely wounding Sokur Ulla and Nos. 6, 7 and 8, being accomplices in riot attended with the culpable homicide of Zeemut Ulla and severe wounding of Sokur Ulla.

Committing Officer—Mr. A. W. Russel, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 11th August 1853

Remarks by the officiating sessions judge.—This was a riot which occurred on the 5th of May last (21st Bysakh) in mowzah Kakeenah, thannah Foorunbaree. It would appear a disunion has long existed between the two brothers, Sokur Ulla, the prosecutor, and Jusmut Sirdar, the prisoner No. 4. The widows of two of their deceased brothers lived formerly with Jusmut, but in consequence of disputes, regarding the division of property, the matters had been referred to the zemindar of talook Kakeenah, Sumbhoo Chunder, who gave his decision, awarding a certain portion to the widows, who thereupon removed from Jusmut's house to Sokur Ulla's, and all good feeling appears to have been destroyed between the brothers, in consequence of the evidence then given by Sokur Ulla, and his deceased son, Zeemut Ulla. The day before the riot took place, Aman Ulla, the son of Jusmut, went to the prosecutor's house to see one of the widows and was forbidden by prosecutor ever to come again. The following day, Thursday, Jusmut went himself to prosecutor's house (a distance of half a mile from his own) attended by the other prisoners and after some abuse the riot ensued, in which Zeemut was killed, Sokur Ulla severely wounded, the prisoner Jusmut had his arm broken.

The prisoners all plead *not guilty*.

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Conviction
and sentence
passed by the
sessions judge
in a case of
riot and cul-
pable homi-
cide upheld in
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The five prisoners are all positively sworn to by witnesses and the fact, of Jusmut having inflicted the blow on Zeemut's head and of Chandoo having wounded Sookur Ulla established, in spite of considerable exaggeration and some difference between the depositions made in the magistrate's cut-cherry and the sessions court. Dr. Walker states, the body of Zeemut was too far decomposed for particular examination, but he observed a wound on the head of a nature to cause death.

Jusmut (No. 4) allows in his reply that he went to the prosecutor's house to see the widow Soleema at her request, and says, he was then abused by the other party and his arm broken by Ruhim and that Zeemut interfered to save him. He summoned twenty-three witnesses, of whom nineteen were present, but he only called seven to give evidence. Two of them, Nos. 46 and 52, say, that they saw Ruhim Ulla aim a blow with a stick at Jusmut, which struck Zeemut over the head. Nos. 50 and 54 know nothing to the purpose; No. 51 declares, that Zeemut struck Jusmut, while Jusmut himself states that Zeemut tried to protect him and told them not to beat his uncle, and the other two witnesses are women, who have evidently been tutored as to their evidence.

Chandoo (No. 5) stated before the darogah (and the statement is established as free and unbiased by witnesses Nos. 1 2, 6, 13, 14, 15 and 16,) that he went with Jusmut, and in the riot he wounded Sookur and Jusmut killed Zeemut. He denied before the magistrate and pleaded *not guilty* in court, saying that he merely went to the place, where he heard the disturbance and there saw the wounded parties, and that the affray was over before he reached the spot. He produces three witnesses; Nos. 59 and 61 know nothing, and No. 69 saw him in the bazar.

Ala Bux stated before the darogah (and the statement is proved by Nos. 13 and 15 before the court as voluntary,) that Jusmut took him with him, and there he witnessed the riot, in which he saw Jusmut strike Zeemut over the head and Chandoo (No. 5) wound Sookur, and Ruhim break Jusmut's arm, but he took no part in the riot. Before the magistrate he denies and pleads *not guilty* in court. He produces one witness (No. 62) before me, who knows nothing.

Bhadoo (No. 7) stated before the darogah (and the statement is proved by witnesses Nos. 1, 4, 13 and 14, as free and voluntary,) that he accompanied Jusmut to the place and heard him say afterwards that he had killed Zeemut, but did not see him do so: he took no active part. He brought three witnesses, all near relations, (Nos. 65, 66 and 67,) in his defence before the court, but they know nothing in his favor.

Alee Nosya (No. 8) denies throughout. Before the court he states that he never went there and attempted to establish an *alibi*. He produces four witnesses; No. 68 did not see him at his usual place of work, where he states he was at the time on that day; Nos. 69 and 71 know nothing, and No. 70 saw him in the bazar in the evening.

The law officer convicts No. 4 on the second count, as far as the killing of Zeemut in the riot goes; No. 5 of the second count as far as the wounding of Sookur goes, and Nos. 6, 7 and 8, on the third count, and I agree and sentence accordingly.

I do not consider that there were grounds for committing on a charge of wilful murder.

Sentence passed by the lower court.—Nos. 4 and 5, each to be imprisoned with labor and irons; No. 4 for six (6) years and No. 5 for five (5) years, and Nos. 6, 7 and 8, each to be imprisoned without irons for three (3) years, and to pay a fine of thirty (30) rupees on or before the 10th September 1853, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—Jusmut Ulla (No. 4) and Alee Nosya (No. 8) have appealed; but I concur with the sessions judge and the law officer that there is sufficient proof to convict these prisoners, and therefore confirm the sentence passed on them by the sessions judge.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT AND SADEE BEWA

versus

SHEIKH MUNGLEE.

CRIME CHARGED.—1st count, culpable homicide, in having so severely assaulted Radhoo Roy, the son of the prosecutrix, that he died from the effects of the beating on the night of the 7th May 1853, and 2nd count, aiding and abetting in the above culpable homicide.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 29th June 1853.

Remarks by the sessions judge.—The prisoner pleads *not guilty*. It is in evidence, that on the 7th May last, the prisoner, accompanied by five others, visited the villages of Boro

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MUNGLEE:

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convicted of
culpable homicide
sentenced to five years'
imprisonment.
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Kalinkoce, to escort some recusant ryots to the zemindar's cutcherry at Bunpatna. Having secured about 14 persons including the deceased, Radhoo Roy, they proceeded to their destination. On the way they halted at a tank to rest and drink some water. The deceased then said he felt tired and was unable to proceed any further; the prisoner insisted in his going on, and deceased still showing reluctance to move, the prisoner kicked him on the side, and seizing him by the throat with his hands, pushed or thrust him to the ground. With the assistance of his companions, he managed to walk about a mile farther, when he became exhausted and was compelled to lie down in a field, where he expired a few hours after. The prisoner, leaving the deceased in the care of the witnesses Nos. 2, 4, 5, 6, 7 and 8, proceeded with the rest of his charge to the zemindar's cutcherry. The inquest held in the mofussil shows that the neck of deceased was swollen and the skin erased on each side. The sub-assistant surgeon, in his evidence, deposes that the cause of death was congestion of the lungs, produced, in his opinion, by violence used toward deceased; that there were no other symptoms of disease whatever about the body, which was that of a healthy and robust young man. The prisoner, in defence, pleads that the deceased died of cholera and cites sundry witnesses to prove it. They are unworthy of credit; their testimony, as well as their manner of giving it, leaves no doubt that they have been tutored for the occasion. The assessors pronounce the prisoner *guilty* of having caused the death of the deceased. The prisoner's statement, at the different stages of the inquiry, corroborated the evidence for the prosecution, except as to the cause of the death of Radhoo Roy. He has failed altogether to show that it resulted from cholera, whilst on the other hand the evidence of the witnesses for the prosecution, especially that of the medical officer, warrants the strongest presumption that Radhoo Roy met his death by violence used towards him by the prisoner. There is nothing on record to show that it was prisoner's intention to kill or to do deceased any *grievous* bodily harm. The assault was trifling, though the result was serious, for which, however, he must be made responsible. In concurrence, therefore, with the verdict the prisoner is sentenced as per statement.

Sentence passed by the lower court.—Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The evidence of the medical officer, who examined the body, shows that deceased died from congestion of the lungs, and that from marks about the throat the congestion of that organ was attributable to violence used towards the

deceased, producing a partial stoppage of the wind-pipe and causing the congestion which proved fatal to life. It is in evidence, that the prisoner did use violence to the deceased in the manner indicated, and the proper and reasonable presumption is that such violence caused his death. There appears not the slightest ground for the defence set up, that deceased died of cholera.

I therefore see no reason for interfering with the sentence passed upon the prisoner.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT AND KENARAM MANJEE

versus

PHEDOO NAGARCHEE.

CRIME CHARGED.—1st count, committing burglary in the house of the prosecutor, and stealing therefrom property valued at 12 annas, and on a 2nd count, with having in his possession property acquired by the said burglary, knowing it to have been so obtained.

CRIME ESTABLISHED.—Burglary.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 6th October 1853.

Remarks by the sessions judge.—It is shown by the deposition of the prosecutor, that he was sleeping one night, when he was roused by the chowkeedar, and he caught the prisoner with the property, a *lotah* and *cutorah* and a *sindkatee*, with a gun-barrel at one end, in the house; that a struggle ensued, and his father (witness) coming to his assistance, they succeeded in catching the prisoner. The *cutorah* and *lotah* are his property.

Witness No. 1, Ramjee Manjhee, the father, tells the same story.

Witnesses Nos. 2, 3 and 4 were going their rounds, No. 2 being the chowkeedar, and Nos. 3 and 4 neighbours, when they observed two men standing near a hole cut into prosecutor's wall, who ran away on being observed. The chowkeedar gave the alarm to the inmates and then pursued the men, but failing to catch them returned and found the prisoner arrested.

The other witnesses confirmed the story and swear to the property, bear evidence to the good repute of the prosecutor's sister-in-law and the bad character of the prisoner, who has been frequently punished for burglaries before.

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Case of
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Case of
PHEDOO
NAGARCHEE.
Prisoner, an
old convict
and notorious
bad character,
convicted of
burglary and
sentenced to
ten years' im-
prisonment.
Appeal reject-
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NAGARCHEE.

The prisoner denies and states, he went to meet the sister-in-law of prosecutor, with whom he had an intrigue, but offers no defence beyond his reply.

The report of the magistrate shows that he has twice before been punished for burglaries and that he once broke jail.

The law officer convicts and I agree, and considering his general character and the number of times he has been punished, sentence him to ten (10) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoner has appealed, urging that he had an intrigue with the sister-in-law of the prosecutor and had gone on the night in question to her house, when he was seized by the prosecutor and his mother, and though he cited her as a witness, the judge did not examine her. I do not find that she was even cited by the prisoner as a witness. The prisoner failed to prove his defence. I concur in the conviction and, with reference to the bad character of the prisoner, do not think the sentence too severe.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT

versus

MUNGLA CHOWKEEDAR.

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Case of
MUNGLA
CHOWKRE-
DAR.

Prisoner convicted of perjury, sentenced to three years' imprisonment. In appeal the sentence was reduced to one year.*

CRIME CHARGED.—Perjury, in having, on the 21st September 1853, deposed, under a solemn declaration taken instead of an oath before the deputy magistrate of Bograh, that "he had seen Sadoo Nusha and others beat Jungloo Fukeer with *lattees* and throw him down in a paddy field," and again, on the said 21st September 1853, deposed, under a solemn declaration taken instead of an oath before the said deputy magistrate of Bograh, that "he did not see him beaten." Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 6th October 1853.

Remarks by the sessions judge.—This is a common case of perjury. In a case of assault, tried by the deputy magistrate, the prisoner was a witness, and first deposed that he saw certain defendants in the case beat the prosecutor with sticks and throw him down in a paddy field. Afterwards he denied having seen the beating, which he said he only heard of from the

prosecutor. Before the magistrate he confessed. The case is clearly established in court by the evidence of the writer of his deposition and witnesses Nos. 2 and 3, as well as the confession before the magistrate by the attesting witnesses Nos. 4 and 5. The prisoner pleads *guilty* and offers no defence. The law officer convicts and I agree.

Sentence passed by the lower court.—Imprisonment with labor and irons for the term of three (3) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.) - The prisoner has appealed, but without stating any grounds. The prisoner pleaded *guilty* at the trial. I have examined the record and see no grounds for interfering with the conviction, which is fully borne out by the evidence; but as the perjury was not of an aggravated kind, I think one (1) year's imprisonment with labor will meet the case.

PRESENT :
A. J. M. MILLS, Esq., Judge.

GOVERNMENT

versus

JEEBOO PATHAN.

CRIME CHARGED.—Perjury, in having, on the 2nd June 1853, corresponding with 11th Assar 1260 B. S., intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before Mr. C. F. Carnac, magistrate of Moorshedabad, that he had heard that Mogal Jan and the burra sahib, whose name he did not know, and Furreed Khan and Captain Mussurut Alee Khan and the Aruz Begee, whose name he did not know, and three or four other persons, who were with them, but whom he did not know, beat, but he had not seen, and that Aman Alee Khan gave orders to get the property any how, but did not give orders in his presence ; and in having, on the 31st August 1853, corresponding with 16th Bhadoon 1260 B. S. again intentionally and deliberately deposited, under a solemn declaration taken instead of an oath before the sessions judge of Moorshedabad, that the Khan Sahib gave Hingoo a slap and a *thokur*, and that the Meahns beat him all conjointly, some with sticks, some with *beyts*, and others with *coraha* and asked where the property was, and that seeing this he went away. Such statements being contradictory to each other on a point material to the issue of the case.

Committing Officer—Mr. J. W. Cockburn, deputy magistrate of Moorshedabad, exercising full powers of magistrate.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 29th November 1853.

1853.

December 15.

Case of
MUNGLA
CHOWKEE-
DAR.

MOORSHEEDA-
BAD.

1853.

December 16.
Case of
JEEBOO PA-
THAN.

Prisoner
convicted of
perjury, sen-
tenced to one
year's impri-
sonment.

The Court
pointed out to
the sessions
judge the
course to be
pursued by
him, in a case
of perjury in
which he con-
siders a less
penalty than
three years'
imprisonment
necessary.

1853.

December 16.

Case of
JEEBOO PA-
THAN.

Remarks by the sessions judge.—The prisoner pleaded *not guilty*.

The prisoner was a witness in a case of murder, in which he gave his evidence at first before the magistrate upon oath, on the 2nd June 1853, that he had *heard* that Mogul Jan and others beat the deceased, and that Aman Ale Khan gave orders to get the property any how, but he did not see them beat, nor was the order of Aman Ale Khan given in his presence; and again, on the 31st August 1853, he deposed upon oath, before the sessions court in the same case, that the Khan Sahib gave Hingoo a slap and *thokur* (push,) and the Meahns beat him all conjointly with sticks, *beyts* and *corahs*, and asked where the property was, and that *seeing* this he went away. Such statements being contradictory to each other on a point material to the issue of the case, he was made over by the sessions judge to the magistrate for ultimate commitment to the sessions.

During the trial, of the case before me, I examined three witnesses, namely Bykunthath Mozoomdar and Chunderkant Mookerjea, mohurirs of the foudaree court, who had taken down in writing the deposition of the prisoner that was given by him on the 2nd June 1853, before the magistrate upon oath, and Debee Churn Chatterjea, the mohurir of this court, who had written down the evidence given by the prisoner before the sessions court on the 31st August 1853. From the evidence of these witnesses, it was proved that they had written down what was deposed by the prisoner in his evidence in the case of murder before the magistrate and the sessions judge as stated above.

The jurors, who sat on the trial, declared the prisoner *guilty* of the offence with which he was charged, in which finding I concur. As the perjury of the witness consisted not in a denial of what he had sworn to in the lower court, but in exaggerating and stating more in the sessions than he had stated in the magistrate's court, and as he appeared at the time to be under the influence of *ganja*, and as it is *possible*, though not probable, that the second statement may have contained the truth, and the first a falsehood, I think, under the circumstances, the contradiction between the two statements will be sufficiently punished by imprisonment for one year with labor, and therefore, with reference to Regulation XVII. of 1817, sentence him to that punishment, and beg to refer the trial for the final orders of the Nizamut Adawlut.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—I concur in the conviction of the prisoner, and, under the circumstances of the case, sentence him to one (1) year's imprisonment with labor. The sessions judge has, the Court

observe, not now complied with the requirements of the law. He should have sentenced the prisoner to three (3) years' imprisonment, which is the minimum punishment he can inflict, and referred the trial for further mitigation, as pointed out to him in the Court's resolution,* No. 1271, of the 14th ultimo.

1853.

December 16.

Case of
JEEBOO PA-
THAN.

PRESENT :
 SIR R. BARLOW, BART., }
 AND } Judges.
 J. DUNBAR, Esq., }

GOVERNMENT

versus

KISHANUND BAROI.

CRIME CHARGED.—Wilful murder of Raimunnee Rundee, DINAGEPORE his wife, on the 2nd August 1853.

Committing Officer—Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 30th August 1853.

Remarks by the sessions judge.—The prisoner was charged with the wilful murder of his wife, Raimunnee Rundee, on the 2nd August 1853. The prisoner, after committing the murder, presented himself at the thannah, with a bloody *dao*, and blood-stained clothes in his hand, the clothes which he wore being also marked with blood. At first he said he had been to a marriage ceremony at a neighbour's house with his wife and children (a boy and girl;) that his wife refused to return with him at mid-day; that she came shortly afterwards, abused him for not giving her armlets (*sanka*) and threatened to strike him with a broom (*jharoo*) and then lay down, when he being enraged, cut off her head with three blows of a *dao*. He, subsequently, on being questioned by the darogah, said that he had murdered his wife, because he suspected her of an intrigue with her brother-in-law, as she was constantly flirting with him at his house, abused him, (the prisoner,) and paid no attention to his remonstrances. The prisoner also confessed in the foudaree and before me, stating that he murdered his wife on account of her intrigue with her brother-in-law. The

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Case of
KISHANUND
BAROI.Prisoner
charged with
the wilful
murder of his
wife, acquitted
on the ground
of insanity.

* Extract from a Resolution, No. 1271, dated 14th November 1853.

The Court, having perused the papers above recorded connected with the case of Jeboopathan, and observing that the sessions judge has not stated the grounds on which he recommends a mitigation of punishment, and has omitted to pass sentence according to Clauses 1 and 2, Section XIX., Regulation XVII. of 1817, direct that the proceedings be returned with instructions to the sessions judge to pass sentence upon the prisoner and then refer the trial, with his sentiments at large, for the final orders of the Nizamut Adawlut as prescribed by Clause 3, Section IX. of the above Regulation.

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Case of

KISHANUND
BAROI.

neighbours first heard of the murder from the prisoner's children (a girl seven years of age and her brother still younger,) who returned to the house where the marriage ceremony was going on, and said that the prisoner had killed their mother and gone away. The brother-in-law of the deceased is now married to a niece of the prisoner, and from the evidence, it does not appear that there was any ground for suspecting him of intriguing with the deceased, who was of good character. The *futwa* of the law officer convicts the prisoner of wilful murder, in which I concur, and recommend that he be sentenced to suffer death.

The case having been first laid before Sir R. Barlow, he recorded the following minute :—

The prisoner confessed before the police, he had with his wife, deceased, and his two little children been to a marriage at the house of Buneekaunth, witness (No. 1) who married his niece and whose house adjoins that of the prisoner. When she came home, some words passed between them, she went to sleep and the prisoner killed her with three blows of a *dao*. The darogah in his report states, that deceased was a loose woman, and had an intrigue with Buneekaunth as shown by the witnesses Bhuggut Chowkeedar, Hurree Das. Posbosoo and others. Before the magistrate, and also before the sessions judge, in their depositions these witnesses depose to the reverse and declare that they know nothing against her character.

The prisoner has throughout pleaded, that he had suspicions of his wife and on that account killed her, but as already stated there is no evidence on the record which bears out the imputation of her inconstancy.

The witnesses have deposed to an illness from which the prisoner suffered, some time previous to the offence charged, but it is not established by the questions which were put to them that the prisoner was of unsound mind then, and nothing whatever is brought forward to create a doubt of his sanity when he committed the murder. I concur with the sessions judge and law officer in convicting the prisoner of wilful murder and would sentence him capitally.

Mr. Dunbar, to whom the case was referred for a second voice, not concurring with Sir R. Barlow, the following Resolution, (No. 1213), dated 17th October 1853, was issued :—

The Court, having perused the papers connected with the case of Kishanund Baroi, observe that some of the witnesses examined at the trial, have distinctly stated that not very long before the murder, the prisoner had been ill, and that a change had, in consequence, come over his temper ; but few questions were put to the witnesses on the subject, when even a remote doubt has been raised as to the possibility of aberration of

intellect, the Court think that a full and searching inquiry should be made. They consider it the more necessary, in this case, as putting aside the imputation on the chastity of the deceased, which is not borne out by the result of the investigation; there is an absence of any sufficient motive for the crime, while the conduct of the prisoner in walking straight off to the thannah, and accusing himself, is certainly unusual.

The sessions judge will be requested to institute a full and satisfactory inquiry as to the state of the prisoner's mind. With this view he will send for and examine some of the most respectable people, living in the immediate neighbourhood of the prisoner's house, and who, it may be presumed, had fair opportunity of seeing him during the two months preceding the murder. He will also ascertain by the statements upon oath, how the prisoner conducted himself after his arrest and since his incarceration, and he will likewise request the civil surgeon to examine the man, and take his deposition after such examination. He will then re-submit the proceedings with his own opinion as to the entire sanity or otherwise of the prisoner.

In reply to the above resolution, the following letter, No. 207, dated the 24th November 1853, was submitted by the sessions judge:—

I have the honor to re-submit the original proceedings in the trial noted in the margin, together with evidence as to the state of the prisoner's mind, subsequently taken under Government pro-secutor, *versus* Kishanund Baroi charge, wilful murder. resolution No. 1213, of the 17th ultimo.

From the evidence of the people living in the immediate neighbourhood of the prisoner's house, and from that of the jail mohurir, it would appear that the prisoner was insane before he committed the murder, and when he was first sent to jail; but their evidence is clearly exaggerated as there was not a whisper of insanity until the trial, when, with reference to the man having himself reported the murder at the thannah, I questioned the witnesses as to his previous state of mind, and with some difficulty got them to allow that he had been ill some two months before, and was considerably changed in consequence.

Throughout the trial, I could not observe a trace of insanity in the prisoner, though I spoke to the witnesses about his children and on other subjects. I thought likely to test his state of mind, and having been told by the civil surgeon that while in hospital he had not shown any signs of insanity, I attributed his conduct in reporting the murder at the thannah more to method than to madness.

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Case of
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BAROI.

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Case of
KISHANUND
BAROI.

The man, however, now appears much reduced by sickness and perfectly listless. The civil assistant surgeon states, that when formerly in hospital he showed no symptoms whatever of insanity, but that within the last month he has again been ill several times and has shown most unmistakeable signs, and that though now at times apparently well, he is subject to relapses and may possibly have been insane before the murder.

The civil assistant surgeon told me of the state the prisoner was in before the Court's orders arrived, and he has since watched him most carefully, I have therefore, no hesitation in giving my opinion that he is now insane. I believe, however, that he was sullen but not mad when he committed the murder, and that fear, perhaps mixed with remorse, has brought him into his present state, and though the possibility of his having been insane, when he committed the murder, may be a bar to capital punishment I cannot recommend acquittal.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. J. Dunbar.)

MR. DUNBAR.—Had the result of the further inquiry ordered by me, been such as to show that the prisoner had shown no symptoms of derangement, since his arrest, there might have been some reason for regarding the statements of his neighbours, with respect to the depressed and unsettled state of his mind, previous to the murder, as the mere consequence of their desire to save the man from capital punishment; but when it is admitted, that he is now occasionally, beyond question, insane, I do not feel myself at liberty to put such an interpretation on their evidence. The civil surgeon declares that though now at times apparently well, he is subject to relapses, and may possibly have been insane before the murder. The inference I draw from this, coupled with the other evidence on the point is, that the murder was committed when the prisoner was labouring under the strong pressure of his malady; and that the sessions judge saw him (at the trial) during one of those intervals, when the signs of insanity were less manifest. I would acquit him, leaving him to be dealt with by Government as an insane.

As the further evidence, taken by the sessions judge, places the case in a light different from that in which it appeared to Sir R. Barlow when he first saw it, I request that the papers may be again laid before him.

SIR R. BARLOW.—There was nothing on the record, when first laid before me, which led to the conclusion that the prisoner was insane when he committed the murder of his wife. He deliberately confessed in the mofussil, before the magistrate, and in the sessions court, at the trial, the motives which induced him to kill and the manner in which he did it. Something

was said in evidence of his having been ill some time before the occurrence, which, of course, is quite insufficient to exonerate him of responsibility. Neither the sessions judge nor the law officer thought the prisoner insane, and both convicted him of wilful murder.

The case was referred by Mr. Dunbar for inquiry as to the state of the prisoner's mind. The sessions judge reports, that throughout the trial he could not observe a trace of insanity in the prisoner, and that he was told by the civil surgeon, that while in hospital, prisoner had not shown any signs of insanity.

The sessions judge now states, that evidence has been taken, from which it would appear, that the prisoner was insane before he committed the murder, and when he first went to jail ; but the evidence, he says, is clearly exaggerated, as there was not a whisper of insanity until the trial.

The civil surgeon now reports that when the prisoner* first went to jail he showed no symptoms whatever of insanity, but has, within the last month, (November,) shown unmistakeable signs, "and that though now at times apparently well, he is subject to relapses and may possibly have been insane before the murder." The sessions judge has no doubt the prisoner "is now insane, and that fear perhaps and remorse have brought him into his present state."

Under existing circumstances I am willing to revise my former minute, and to give the prisoner the benefit of any doubt which may arise as to his sanity ; at present he is reported insane. It is not, I think, so fully and clearly established, as it ought to be, *that he was insane at the time of the commission of the murder* ; this is the point upon which the whole case hinges ; I will not however object to an acquittal upon the report now furnished, no punishment can be awarded if it be assumed that the prisoner was insane.

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December 16.
Case of
KISHANUND
BAROI.

* The prisoner was apprehended on the 2nd August.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND PUNCHANUN

versus

SREEMOTEE KOONJU DASEA KAIETNEE (No. 1.)
AND SREEMOTEE OOMA DASEA (No. 2.)

HOOGHLY.

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December 16.

Case of

SREEMOTEE

KOONJU

DASEA

KAIETNEE

and another.

Prisoner convicted as an accessory before the fact to the wilful murder of the young wife of the prosecutor, (whose mistress the prisoner had been) sentenced to imprisonment for life in banishment.

CRIME CHARGED.—Wilful murder of Unnoda Dasea, prosecutor's wife, on the 26th April 1853, corresponding with 15th Bysakh 1260 B. S.

Committing Officer—Mr. R. B. Chapman, assistant magistrate in charge, Hooghly.

Tried before Mr. J. S. Torrens, sessions judge of Hooghly, on the 4th October 1853.

Remarks by the sessions judge.—Prosecutor is a moonshee in the court of the moonsiff at Mohanauth, in which town he resided with some female members of his family at the time of this murder. The prisoner No. 1 was his mistress, who had lived with him after decease of his first wife, for upwards of five years, up to the end of Cheyt last. In Assin, as prosecutor deposes, he projected marriage with the deceased, Unnoda Dasea, and on communicating this to the prisoner (No. 1,) she warned him that she would murder either him or his intended bride. Ultimately, as he deposes, in the end of Cheyt, he effected an arrangement with her, under which he paid her rupees 21 and she agreed to go and reside at Marshit, a village about a cose distant from Mohanauth.

On the 12th of Bysakh, he married, at Trebeeni, the deceased, aged about 12 years, and brought her home to Mohanauth on the 13th. On the 15th, the inmates of his house were two sisters, with the children of one of them, a maternal aunt, very aged, and who has since died, and the deceased, Unnoda—the latter sleeping in the compartment facing the south, the aunt in the verandah of the same, and the sisters in the compartment opposite. At about 9 o'clock, as he states, having drawn the bolt of the door of his wife's room, he left the house to answer a call of nature, and on his way to the tank, to which, he states, he was going for this purpose, represented to be about 12 beegahs off, he met, near his house, the prisoners Nos. 1 and 2 with another woman, named Keta Chassanee, and, as he thought, two or three men following them at a little distance. Prisoner No. 1, he states, accosted him, representing that her house at Marshit had been burnt down, and that she required coolies to remove the property taken from it to a place of safety. He asked how he could procure coolies at that hour, on which, as he passed on, the prisoners said they would go and wait his return at the sunder *durwaza* of his house. To

this, he implies, he assented, and returned after one *dund* from the tank, when he found the prisoners gone and his wife also.

He states that on this he raised a cry, when several of the neighbours came to him, including Petumber Haree (witness No. 17,) one Seetanauth Bose* and Lukun Haree.† These informed him that the prisoners had passed them with the child, who was being carried by prisoner No. 2. He then went off with Petumber Haree and Chundee Sirdar (witness No. 26) to the dwelling of the prisoner No. 1 at Marshit, found that she was absent, and the door of her house closed. They then returned, and he continued his search at Mohanauth; and in the morning, about one *dund* of the day, he was met by the naib phareedar, Pooran Bose, (witness No. 1,) who informed him his wife's body had been found in a tank, called the *Sircar Pooshkurnee*, the distance of which from prosecutor's house is variously stated, but appears to be less than half a mile, and close to the public road. After having seen the corpse, he states he returned in a distracted state to his house, and that afterwards, the *phareedar*, Gourmohon Paurey, (witness No. 2,) and Muddoo Chowkeedar, (witness No. 23,) came to him, telling him to take up the corpse, which was naked in the tank. He returned for this purpose and having covered it with some of his own clothing, left it on the steps, where it remained until the arrival of the darogah of Pandooa (sessions witness No. 47.)

Both prisoners plead *not guilty*. Prisoner No. 1 partially confessed before the police and before the magistrate. She corroborated the fact of the separation agreed on betwixt her and prosecutor, stating that she had then returned to a former paramour, one Sreroop or Cheeroor Kur, from whose protection prosecutor, she states, had originally taken her; that this individual, whom she was in the habit of meeting at the house of Keta Chassanee, advised her to be avenged on prosecutor; that on the night in question, she had gone to the house of Keta Chassanee with Sreroop, who made her send Keta Chassanee to call the prosecutor to her; that they had gone accordingly for the purpose to prosecutor's house, and when he came out, prisoner engaged him in conversation in an old *Chundee Mundob* close by, for about one *dund*; the prisoner then left him and returned to the house of Keta Chassanee, where she found Sreroop,‡ his servant, Ishur Baganee, Gunga Coomar Bonomalee, and others, with the deceased. Ishur, she states, took the ornaments off the girl and carried her away in direction of a bridge, near the *Sircar Pooshkurnee*. Having done this, and left her somewhere, he came back and was

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Case of
SHEEMOTER
KOONJU
DASSEA
KALETNEE
and another.

* Sent for from the sessions court but not forthcoming.

† Since deceased.

‡ All released before magistrate, no proof being against them.

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Case of
SREEMOTEER
KOOIJU
DASEA
KAETNEE
and another.

sent with the prisoner by Sreeroop to her house. Before the darogah, the confession is more complete than before the magistrate. She says, when the ornaments were taken from the person of the deceased, Sreeroop, in her presence, desired the child to be killed and thrown into the tank; that the others present accordingly took her away for the purpose, she, the prisoner, following.

The witnesses whose evidence is brought forward against the prisoner, independently of the confessions of No. 1, and the witnesses who attested them, are principally Peetumber Haree (No. 17,) Chundee Jgee (No. 19,) Bycunt Doime (No. 18,) Meherooddeen Gareewan (No. 15,) Kaled Sormkar (No. 14,) Lokeenarain Roy (No. 13,) Premchaund Dey, father of the deceased, (No. 20,) Sonamonee Dasea, prosecutor's sister, (No. 25.) The report of the darogah of Pandooa, completing his investigations, was received by the magistrate on the 3rd of May. He had not taken the evidence of witness No. 20 or 25. His report purports, that he had taken evidence of the prosecutor's aunt, who was sleeping in the verandah, but records that she alleged ignorance. There is not any date affixed to the abstract record of this evidence, and it is probable she (old woman) was kept out of the way with the other females, by prosecutor. Timely cross-examination of her would have elicited much, but she died, it is stated, five days after the murder. The evidence of Sonamonee (No. 25,) which was with difficulty procured, both before the magistrate and sessions, is not satisfactory, as she states she had retired at the time her brother went out, and knew nothing until his giving the alarm, that his wife was gone, on his return; but she states, on cross-examination, that the aunt had stated to her brother and herself on his return, that she had called out that the two women were taking away the girl; that the witness did not hear; that the aunt was old and decrepit, and was not able to do anything.

The story of prosecutor is no doubt inconsistent in very many particulars, obvious to the court on perusal of the evidence, and seems not to give the truest detail of the circumstances, which led to the barbarous destruction of the helpless and unoffending victim of vengeance aimed against another, and in her full health and youth, a few days after separation from her parents and consignment to the home of those who, the husband included, all appear to have been, at all events, too regardless of her safety. The evidence of the assistant surgeon would show that death took place after immersion in the water, most probably drowning, accompanied with strangulation. The evidence of this witness points to the circumstance of the clothes in which the corpse was wrapped being

tight round the body, but the examination of the darogah of Pandooa (witness No. 47, sessions,) and Gour mohun (witness No. 2,) would make it appear that the state in which the clothes were found by the assistant surgeon was caused in the preparation for despatch of the body to the station. The circumstance of the weed of the tank, and the piece of broken vessel being amongst the clothes, I think of no great moment, as these may have adhered, and been taken up in wrapping the body on the steps. I searched at the sessions for the *chelan* sending in the corpse, but could not find it with the record. The police should be particular in entering the *status* of the body at time of despatch, and by whom carried, and their inattention to this in this case is remarkable. On the whole, I am of opinion the corpse was found naked, and that the death was effected in the water.

Considering the evasive nature of the prosecutor's story, the tank to which he alleges he was going, not being that nearest his house to which he was wont to go for the alleged purpose his having evidently continued in intimacy with prisoner No 1, after his marriage, as shown from evidence of Peetumber Harce, and considering also the nature of the evidence of the witnesses Nos. 19 and 18, who state they saw the prisoners in the act of carrying away the child, as well as the nature of the evidence of Nos. 1, 15, 14, 16, who state they recognized both prisoners ascending from the *Sircar Pooshkurnee* at about 9 o'clock on the night of the occurrence, being the same time prosecutor states, he first went out, I am not of opinion that guilt is satisfactorily proved against prisoner No. 2, and I therefore agree with the law officer in her acquittal. The law officer convicts the other prisoner, as accessory before and after the fact. I agree so far in this conviction, considering it fully warranted on the positive and direct evidence of the prisoner's own confession, but whilst this positive evidence fully establishes her *guilt* as accessory before the fact, I conceive, moreover, that whoever else may have been participants in her *guilt*, there is strong presumptive and circumstantial evidence to establish the full charge against her of the wilful murder of the deceased.

In her defence she states, that her confession was extorted from her ; that the darogah tortured her by putting chillies into her person. This, I conceive, quite untrue, and bears contradiction with it in the statement, as the darogah is stated to have suspended her to the rafters of the house, whilst she alleges she was alone with him at the time. In either case, as accessory before the fact, a principal prisoner is legally liable to suffer death, and I have painfully to submit my opinion accordingly for the consideration of the Court for that sentence.

1853.

December 16.

Case of
SREEMOTEE
KOONJU
DASEA
KAETNER
and another.

1853.

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Case of
 SREEMOTEE
 KOOJU
 DASBA
 KAIETNEE
 and another.

or, if the circumstances of the case be not such to warrant the extreme penalty, that she be imprisoned in banishment and with hard labor for the term of her natural life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—I cannot concur in the recommendation of the sessions judge and pass capital sentence on the prisoner. The evidence against her is very weak, and but for her confessions made before the police and repeated in the magistrate's court, no conviction could take place: she pleads not *guilty* in the sessions court, and states she was ill-used in order to extort her confession in the mofussil: of this there is no proof. Judging of her guilt by the extent of her own admissions, I convict her of being an accessory before the fact, and sentence her to imprisonment for life, with labor suited to her sex, in banishment.

PRESENT :

H. T. RAIKES, Esq., Judge.

GOVERNMENT

versus

SOOKUN (No. 14,) DOOLEE (No. 15,) JHUMUN
 (No. 16,) AND BODHEE (No. 17,) APPELLANTS.

CRIME CHARGED.—Highway-robery of property valued at rupees 27-9.

CRIME ESTABLISHED.—Highway-robery of property valued at rupees 27-9.

December 16.

Case of
 SOOKUN and
 others.

The prisoners, convicted by the sessions judge on a charge of highway robbery, were acquitted in appeal.

Committing Officer—Mr. W. Tucker, magistrate of Monghyr. Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 20th July 1853.

Remarks by the sessions judge.—Prosecutor, a lad of 15, was coming into Monghyr with two others, witnesses Nos. 1 and 2, when he was set on by ten men, who robbed and maltreated him and his two companions. The magistrate, in his abstract entered in the calendar, states, that “the acting darogah went immediately to the village and assembled the inhabitants from amongst whom prosecutor pointed out the four prisoners as being the robbers.” This however was not the case; the occurrence took place at about noon on the 20th of February. Prosecutor returned to his home about a mile distant, thence proceeded to the thannah close by; the darogah made report of the circumstances to the magistrate, on the same date, stating that without a purwanah to the principal zemindars, he should not be able to detect the offenders. The magistrate, on the 25th February, issued the purwanahs required. On the 13th of March, the darogah assembled 116 men of mouzah Doulutpore and other places, when prosecutor selected the four prisoners (own brothers) as those who had robbed him, but

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did not wish that their houses should be searched for any of the missing property (he explains that so long a time after the robbery, there was no chance of finding any thing.) The darogah further reports that, in his opinion, his evidences against the prisoners is not sufficient. On this the magistrate, under date the 17th of March, ordered Mehender Narain, darogah, to re-investigate the case, who, on the 2nd of April, reported that he had assembled 246 men, from among whom prosecutor and his witnesses selected the same four persons, pointing out no others, but that he did not think the case proved against them, but the magistrate ordered the attendance of the prosecutor and witnesses, and that the accused should be released on security. On the 20th of April, the prisoners were ordered to be apprehended.

The evidence against them is, that of prosecutor and his two companions, witnesses Nos. 1 and 2; prosecutor and witness No. 1 are very consistent in their story, and on a number of other men of the same general dress and appearance as the prisoners being mixed with them, prosecutor at once distinguished those, the witness Bheekoo had before pointed out, as having severally struck the blows and snatched away the ornaments. Witness No. 2, could not appear on account of illness, but his evidence before the magistrate was duly attested on oath before this court by the writer of the deposition.

The prisoners are all brothers, they simply deny the charge against them, and produce witnesses to good character, who all speak well of their respective clients.

The jury find the prisoners *guilty* of the crime charged against them in the calendar, in which I concur.

I see no reason to doubt the evidence against the prisoners, it is consistent throughout, and there is no assigned or apparent motive that could have induced the prosecutor and his attendants wrongfully to accuse them.

There was no violence to speak of. There is doubt even of any blow having been inflicted; prosecutor in his deposition at the thannah not having mentioned it, and there was nothing of an aggravated nature in the attack; the prisoners seem to have borne a good character up to the commission of this crime; their punishment, therefore, is less severe than it might otherwise have been. I sentence them to be imprisoned for five (5) years with labor in irons, and under Act XVI. of 1850, to pay jointly and severally a fine of rupees 27-9.

The magistrate should be cautious and exact in stating the circumstances of cases in his abstract of examination entered in the calendar, the mis-stated fact, alluded to in the commencement of these remarks, was likely to mislead and cause confusion in the trial of the case.

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Sentence passed by the lower court.—Each to five (5) years' imprisonment with labor and irons, and under Act XVI. of 1850, to pay jointly and severally a fine of rupees 27-9, as compensation for the loss sustained by Manjhee Sahoo, prosecutor.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—The prosecutor and the witnesses were robbed on the 20th of February by two men. They did not know those who robbed them, nor were they able to accuse any one ; but three weeks after the occurrence, upwards of 150 men of a village, in the direction of which the robbers had proceeded, were assembled by the police, and the prosecutor and his two companions then picked out the four prisoners as the men who had committed the robbery. There is nothing to corroborate this accusation, nor did the prosecutor and his witnesses singly identify these men and unknowingly support each other's recognition of them. I consider such evidence far too unsafe to trust to, and therefore acquit all the prisoners.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT AND BOGALEESHAH
versus
NUBEE BUXT

PURNEA.

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Case of
NUBEEBUX.
Conviction
and sentence
in a case of
arson upheld
in appeal.

CRIME CHARGED.—Arson, in maliciously having set fire to the stables of the prosecutor's master, by which fire several other houses and property belonging to him were burnt, value amounting to upwards of a thousand rupees.

CRIME ESTABLISHED.—Arson.

Committing Officer — Mr. B. R. Perry, deputy magistrate of Kishengunge.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Purnea, on the 4th July 1853.

Remarks by the officiating sessions judge.—The prisoner pleaded guilty.

The facts of the case are as follows : Upon the evening of Sunday, the 1st of May, the witnesses Nos. 7 and 8 were sitting in conversation with the prisoner at his door, when he suddenly went into the house, from which flames shortly afterwards broke forth, and he, rushing out with a lighted brand, set fire to the zemindar's stables, which were about 50 *hathas* distant, and was running towards the *toshakhana*, with the avowed intention of firing it likewise, when the witnesses Nos. 1, 2, 3, 4 and others rushed forward and seized him. The stable, containing a carriage and harness, &c., valued at upwards of 1,000 rupees, the prisoner's house, and 12 empty huts, were all

consumed. The zemindar was at that time absent at Purnea, and upon his return, the loss was reported to him, and he, at prisoner's brother's request, sent him to Purnea for examination by the doctor. The assistant surgeon finding him sane, released him, and he returned to Kishengunge and threatened further mischief, whereupon the prosecution was instituted. The facts of the case are fully proved by the evidence of the witnesses, who all attribute the prisoner's conduct to the embarrassed state of his affairs, he being deeply indebted to the rajah and other parties. They all testify to his perfect sanity, both before and subsequent to the occurrence; this testimony is corroborated by Mr. Assistant-Surgeon Beale, under whose surveillance the prisoner had been for a month previous to trial.

The prisoner confessed before the police, that he had set fire to his own house and that the fire had communicated to the zemindar's stable. He denied the charge altogether before the deputy magistrate. Upon the trial he talked in a loud, incoherent manner, and was very restless, getting up and walking about the court, as appeared to me, with the evident intention of imposing upon the jury and myself. We however remarked that he was very observant and attentive to the evidence given by the several witnesses.

The jury found the prisoner *guilty* of the charge, being fully satisfied of his perfect sanity. In this verdict I entirely concur. The prisoner was, it is manifest, much harassed by the state of his affairs, regarding which he talked rationally to the witnesses Nos. 7 and 8 a few minutes before the fire. It appears in evidence, that an ameen had then arrived at Kishengunge for the purpose of attaching the prisoner's property at the suit of one Dinaoollah, and I am of opinion, that in order to defeat this intention, the prisoner wilfully set fire to his house, and then to screen himself from the consequences under the cloak of insanity, he rushed out in the frantic manner described and set fire to the prosecutor's master's stables. Prisoner had never until then exhibited any symptoms of insanity, neither was he in the habit of indulging in intoxicating drugs or liquors. His perfect sanity up to the moment of the fire is testified to by the witnesses. The civil surgeon reports him to have been a strong robust man, with no symptoms of having suffered from any disease likely to cause insanity, when he first saw him in May, and during his confinement in jail, he was constantly observed, and the doctor saw him daily, and saw nothing in the man's conduct to alter his previous opinion of his sanity. I visited the jail after the first day of the trial, and ascertained from the darogah and some of his fellow-prisoners, that the prisoner

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who talked loud and incoherently when he imagined himself to be observed by the doctor or others, was perfectly sane and rational at all other times. Seeing therefore no extenuating circumstances in the case, I sentence the prisoner Nubbee Bux to seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner has urged nothing in appeal in his own behalf. He pleaded guilty at the sessions; there is also the evidence of eye-witnesses, who saw him set fire to the stables. Though his actions on this occasion are not very consistent with reason, yet as there seems to be no doubt of his sanity at the time, I see no reason to interfere with the sentence passed on him.

PRESENT:
H. T. RAIKES, Esq., Judge.

ATEE KHAN

versus

MANA (No. 10,) JUDDOO (No. 11,) AND UKBER ALEE (No. 12.)

TIRHOOT.

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Case of
MANA and
others.

Conviction and sentence passed by the sessions court in a case of burglary, affirmed as to two prisoners, but reversed as to a third.

CRIME CHARGED.—1st count, Nos. 10 and 11, burglary, with theft of property valued at rupees 585-6, and 2nd count, Nos. 10, 11 and 12, knowingly having in possession part of the stolen property, amounting to Company's rupees 24-3-6.

CRIME ESTABLISHED.—Nos. 10 and 11, being accomplices in burglary and theft of property valued at rupees 585-6, and No. 12, knowingly having in possession stolen property, amounting to Company's rupees 24-3.

Committing Officer—Mr. T. A. Glover, joint-magistrate of Chumparun.

Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 9th August 1853.

Remarks by the sessions judge.—The prosecutor in this case is a travelling merchant, a resident of zillah Bareilly, in Rohilkund, but who, in prosecution of his profession, had arrived at Govindgunge, on the banks of the Gunduck, in the Chumparun district, and put up on the evening of the 6th May last, or 18th Bysakh 1260 F. S., at the shop of a *bania*, living in a matted house in the above village. He was accompanied by two servants (witnesses Nos. 7 and 8,) who carried a box and *petarah*, containing the goods he had for sale; and remaining awake till midnight, the prosecutor afterwards fell asleep; but awaking about 4 o'clock in the morning, he observed that his box and *petarah* were gone, as well as some clothes, and he discovered that a burglarious entry had been made into the house by digging a hole in the ground underneath the matted wall, large

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enough to admit an adult: next morning he instituted an unsuccessful search for his property, the box and *petarah* being however found empty outside in the road. He then went to the thannah and informed the darogah, giving at the same time a list of his stolen goods, and the latter having set on foot enquiries, with a view to trace the thieves and property, and succeeded in getting a clue to both across the Gunduck, in zillah Sarun. Taking therefore the prosecutor and his two servants (witnesses Nos. 7 and 8) with him, the darogah first proceeded, on the information he had received, to mouzah Kubeerpore, where he first searched the house of the prisoner No. 10, in which, however, nothing was found, but that prisoner, of his own accord, produced several articles, consisting of rings, *jugnoos* or breast ornaments, ear-rings, forehead and neck ornaments, pewter drinking vessel, and other things, in number 22, confessing at the same time that he had gone with others whom he named, and while they burglariously entered the house where the prosecutor was lodging, and stole the property of the latter while he was asleep, he (prisoner) remained sitting outside, admitting also that he received his share of the booty. Proceeding next to mouzah Sakla, the house of the prisoner Juddoo (No. 11) was searched, and in it were found two articles of the stolen property, *viz.*, one *jugnoo* or breast ornament and one ring, this prisoner likewise spontaneously giving up two other articles, *viz.* one plated armlet and one jacket, and his wife, the prisoner Musst. Nunkee (No. 13,) also of her own accord, produced and gave up several articles, consisting of rings, *jugnoos*, *tikloes*, pearls (imitation), brass *cutorahs* and other things, the husband making a similar confession of complicity to that of his associate, Mana, while the wife stated that the articles she gave up had been stolen and brought home by her husband and by him given to her to keep. In the house of the prisoner Ukbur Alee (No. 12) nothing was found, but he himself produced and gave up a pewter *goorgooree* or *hookah*, which he said that he had received from the prisoner Mana (No. 10) for two *ghurras* of toddy, which he had given the latter.

The prisoner Soomrun (No. 14) was named only by other prisoners, but his house was searched, without however any thing being found.

All the above articles of property found in their houses, or spontaneously produced by the prisoners, and which were inserted in the prosecutor's inventory of missing articles given at the thannah, were identified by the prosecutor and his two servants.

The prisoners Mana and Juddoo and Ukbur Alee repeated before the joint-magistrate, the confession they had made in

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the mofussil, their confessions in each instance being attested by subscribing witnesses.

The prisoner Musst. Nunkee retracted before the joint-magistrate, her previous confession of her knowledge of the articles of property given her by her husband, (the prisoner Juddoo,) stating that she did not know whence he had brought them; and the prisoner Soomrun, both* in the mofussil and foudary court, denied his guilt.

In this court all the prisoners pleaded *not guilty*, and the defence of the prisoners Mana and Juddoo being tantamount to an admission of their complicity, neither of them had any witnesses to call, the prisoner Juddoo allowing that he had once before been imprisoned on conviction of theft in zillah Sarun. The prisoner Ukbur Alee defended himself by pleading that the prisoner Soomrun took from him six *takas'* worth of toddy, for which he (Soomrun) pledged the *goorgooree* which he (prisoner) had given up. He called one witness to speak to his good character, but the person cited knew nothing about him. The prisoner Nunkee's defence was a repetition of her plea of *not guilty*, adding that the prisoner Soomrun had tied up the rings in her clothes. She called no witnesses. The prisoner Soomrun pleaded, that when Juddoo was before put in prison, he (Soomrun) took the field of the latter, and that it was in consequence of a clue given by him (Soomrun) that the darogah searched the other prisoners' houses and found the property recovered, in revenge for which they had named and tried to implicate him. He cited seven witnesses to prove that he bore a good character and was a man of substance and respectability, both of which points were satisfactorily established.

The *futwa* of the law officer convicts the prisoners Mana and Juddoo of being accomplices in the crime of burglary and theft, and the prisoner Ukbur Alee of knowingly receiving stolen property; and pronouncing them liable to discretionary punishment by *tazeer*, acquits both the prisoners, Musst. Nunkee and Soomrun, against whom nothing has been established. I concurred in the propriety of the mooftee's verdict, both in respect of the prisoners he finds *guilty* and those he acquits, in accordance with which finding the three prisoners convicted have been sentenced as shown in the proper column, and the two others acquitted and set free.

Sentence passed by the lower court.—Nos. 10 and 11, each to be imprisoned with labor in irons and in banishment for the period of seven (7) years, and No. 12 to be imprisoned for four (4) years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoners Mana and Juddoo confessed before

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the police and joint-magistrate, and gave up their shares of the stolen property, the proof against them is therefore clear and conclusive; but against Ukbur Alee, it is not so satisfactory. He accounts for the possession of the *goorgooree* as pledged to him for the toddy drunk by the others at his shop. He gave it up to the police, and there is nothing on record to show that he could have known it to be the proceeds of the robbery. I confirm the sentence passed on Mana and Juddoo, but acquit Ukbur Alee for want of proof.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND RAMSOONDER SIRCAR
versus

GOPAL KYBURT (No. 24) AND SREENATH SIRCAR
(No. 17, APPELLANT.)

CRIME CHARGED.—1st count, No. 24, dacoity in the house of Ramsoonder Sircar, the prosecutor, from which property to the value of rupees 257-10 was plundered; 2nd count, prisoner No. 24, privity to the said dacoity before and after the fact; prisoner No. 17, knowingly receiving and possessing a portion of the plundered property.

CRIME ESTABLISHED.—Prisoner No. 24, privity to dacoity before and after the fact; prisoner No. 17, knowingly receiving and possessing a portion of the plundered property.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 12th September 1853.

Remarks by the sessions judge.—These two prisoners, named Gopal Kyburt and Sreenath Sircar, were arrested with the prisoners Nos. 15, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26, of statement No. 8, for September 1853, in the case of dacoity, which occurred on the night of the 13th June 1853, in the house of the prosecutor, and from which property to the value of rupees 257-10 was plundered.

The prisoner Gopal confessed both at the thannah and before the magistrate to having been aware of the dacoity, and in the house of the prisoner Sreenath Sircar, as also in that of a woman, where the prisoner had kept it, a portion of the plundered property was found and identified by the prosecutor and his witnesses as belonging to the prosecutor. The witnesses Khetro Khamaroo and Laloo Sheikh, who were allowed by the magistrate to turn queen's evidence, deposed to the effect that the prisoners went to commit the dacoity. Under these circumstances, there was a strong legal presump-

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tion, that the prisoner Gopal was privy to the dacoity, and the other, Sreenath Sircar, knowingly received and possessed a part of the property, which was plundered from the house of the prosecutor. The sessions judge accordingly convicted the prisoners and sentenced them, as stated in the proper column.

Sentence passed by the lower court.—Prisoner No. 24, three (3) years' imprisonment and a fine of rupees 25, in default of payment to labor; prisoner No. 17, four (4) years imprisonment with labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner No. 17 has appealed. He was named by two approvers and property, recognized by prosecutor's witnesses, was recovered from his house and that of his mistress. The prisoner pleads *not guilty*. He does not claim the property found in his possession, and the witness he cited says nothing in his favor.

Sentence confirmed.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT AND TOTARAM DASS
versus

AREEZ MAHMOOD (No. 4,) BIOLA NUSHA (No. 5,) NUKEE MAHMOOD (No. 6,) TOOFANOO MALEE (No. 7,) AND BANOO NUSHA (No. 8,) APPELLANTS.

RUNGPORE.

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Case of
AREEZ MAH-
MOOD and
others.

Conviction
and sentences
passed by the
sessions judge
in a case of
dacoity re-
versed in ap-
peal.

CRIME CHARGED.—1st count, committing dacoity attended with wounding, and on the 2nd count, with being accomplices, aiding and abetting in the commission of the said crime.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 7th October 1853.

Remarks by the sessions judge.—This dacoity occurred in thannah Govindgunge on the 2nd of July 1853. It is shown from the deposition of the prosecutor, that upon the night of the 19th of Assar, he was sleeping with his family around him, when they were roused by the noise of the dacoits, and, upon his proceeding to the compartment where the noise was, he found some 20 or 25 men assembled: they had no *mussals* lighted, and commenced beating witnesses Nos. 1 and 2. He snatched up a *lattee*, but getting himself struck, he ran into the jungle, a very short distance from the place, and from thence he saw Toofanoo light a fire and recognized him (No. 7,)

Areez (No. 4,) Nukee (No. 6,) Banoo (No. 8,) and Bhola (No. 5,) and some others. When the neighbours began to arrive, the dacoits made off, and he and the neighbours went to the house, and he missed certain property and found Deepram (witness No. 1) much hurt. On asking him who wounded him, he said all the prisoners and became insensible. Mustram (witness No. 2) had also been beaten with sticks.

Witness No. 1, Deepram Dass, deposes that they were all asleep and roused, as the prosecutor details; that he saw Toofanoo light the fire, and that Banoo (No. 8,) Bhola (No. 5,) Areez (No. 4,) and Nukee (No. 6) beat him: some of them had clothes over their faces, but he cannot specify who he was. Much injured and long under the doctor's care.

Witness No. 2, Mustram, tells the same story and recognizes all the prisoners.

Witness No. 3, Boodhoo, a neighbour, came to the house on hearing the noise and saw Toofanoo light the fire, by which he recognized him (No. 7,) Nukee (No. 6,) Areez (No. 4,) Bhola (No. 5,) and Banoo (No. 8.)

Witnesses Nos. 4 and 5, Monah and Roopram, neighbours, recognized Areez (No. 4,) Toofanoo (No. 7,) Bhola (No. 5,) and Banoo (No. 8.)

Witness No. 6, Khosal, arrived after the dacoits had gone, but heard the details.

Nos. 7, 8 and 9, *sooruthal* witnesses.

Mr. Taylor, the apothecary, states that the wounded man, Deepram, was brought to him on the 10th of July; that he was severely wounded and in danger for some days.

The prisoners throughout have persisted in their innocence, and plead *not guilty* before the court.

No. 4, Areez Mahmood, pleads an *alibi*, and brings six witnesses to support it.

No. 5, Bhola, pleads his general good character and supports it by three witnesses.

No. 6, Nukee, pleads he was at home and brings two witnesses to prove it.

No. 7, Toofanoo, pleads that he was at home and brings five witnesses to prove it.

No. 8, Banoo, declares he was at Nuzzur Mahmood's house, and calls two witnesses, who know nothing about it.

I tried the case alone under Act XXIV. of 1843.

The prosecutor and witnesses Nos. 1 and 2 have throughout, in their statement, been perfectly consistent. Witness No. 3 does not mention Toofanoo before the darogah, but he declares before the magistrate that he did so. Witness No. 4 is perfectly consistent in all his statements, and No. 5 states that he did recognize Areez before the darogah.

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The houses of the prisoners are not far from the spot and they were known to the prosecutor and witnesses, who are so consistent in their evidence, that it carries conviction, and I entirely discredit the defence set up by the different prisoners. The wounded man would probably have not suffered so severely had he been within reach of medical aid and had he not been sent into the station some days after the occurrence in the heat of July : as it is, he has suffered no material injury, and I considered it unnecessary to trouble the higher court with a reference for enhanced punishment.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for the term of fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The appeal of all the prisoners rests upon the improbability of the prosecutor's story and upon the allegation that he bore them ill-will, which prompted him to charge them falsely. There is the direct evidence of four witnesses to the identification of the prisoners, and the judge remarks that it is "so consistent, that it carries conviction," but the record does not, in my opinion, bear out this statement. On comparing the statement of the prosecutor and the witnesses with their depositions, taken in the magistrate and sessions judge's courts, I find important contradictions and inconsistencies, which the sessions judge has not even noticed. I proceed to notice them *seriatim*.

The prosecutor stated in his deposition, taken on oath by the darogah, that the prisoner No. 8 struck him two blows with a club ; before the magistrate and sessions court, he swore that two or three of the dacoits beat him, but he could not recognize his assailants. He said he recognized eleven of the dacoits. It is highly improbable, that in the alarm of a dacoity, he could have recognized such a number of persons in a dark night by the light of torches.

Witness No. 1, when examined by the darogah, spoke to the recognition of three of the dacoits, *viz.*, No. 4, No. 8, and Bidesee, who he said beat him. Before the magistrate he identified *all the prisoners under trial* and two others not named by him to the darogah, and averred that he was beaten by Nos. 8 and 4, as also by No. 5. On the trial he identified all the prisoners and deposed that the prisoners Nos. 4, 5, 6 and 8 beat him.

Witness No. 2 stated to the darogah, that the dacoits bound him to a post, and Dullee held a burning torch over him and threatened to burn him, if he did not point out where the money was concealed, and that he recognized by the light of the torch ten of the dacoits, the prisoners under trial being amongst the number. To the magistrate he stated

that he loosened the rope by which he was bound to the post and ran off, and that No. 7 and Dullee threatened to torture him with fire. Further, he recognized two dacoits, whose names he did not mention to the darogah, and omitted to identify one, whom he had named to the darogah.

Before the sessions court he swore that he was not bound by the dacoits, but that they were *about to bind* him, when he escaped and ran away. He further stated, that No. 8 struck him a blow on the thigh with a club, and Bhola (No. 5) a blow on the head with the handle of a spear. To the darogah and the magistrate he omitted all mention of this ill-treatment.

Witness No. 3, to the darogah, stated, that he recognized the prisoners Nos. 4, 5, 6 and 8. To the magistrate, he stated that he recognized all the prisoners under trial, and to the sessions court that he recognized all the prisoners but No. 6. Witness No. 4 stated to the darogah, that witness No. 1 had told him that he had recognized No. 4 amongst the dacoits; to the magistrate he said he had himself identified him; and before the sessions court, he went further and deposed to the recognition of No. 6, whom he had not named either to the darogah or the magistrate.

The prisoners were, it is true, neighbours of the prosecutors, and were therefore known to him and the eye-witnesses, but I cannot place reliance on evidence so discrepant and suspicious as this is shown to be, when unsupported by circumstantial proof of any kind, not even by proof of bad character. For the above reasons, I acquit the prisoners and direct their release.

The Court remark, for the information of the sessions judge, that he should have subjected the witnesses to cross-examination, in order to test the truth of their statements, and have called on them to explain the inconsistency in their depositions. The Court cannot but come to the conclusion, that he did not examine the thannah papers and the magistrate's record as closely as he should have done.

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Case of
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and others.

PRESENT :
H. T. RAIKES, Esq., Judge.

GOVERNMENT

versus

MUSTAN SHAH.

SARUN.

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Case of
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SHAH.

Conviction
and sentence
passed by the
sessions judge
in a case of
wounding, af-
firmed in ap-
peal.

CRIME CHARGED.—1st count, wounding Bulakee Rai with a sword, with intent to commit murder, and 2nd count, maliciously wounding Bulakee Rai with a sword.

CRIME ESTABLISHED.—Wounding Bulakee Rai.

Committing Officer—Mr. W. F. McDonell, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 6th July 1853.

Remarks by the sessions judge.—This is a case of wounding, arising out of a dispute which took place between the prisoner and the wounded man about a woman, who was kept by a member of his (prisoner's) master's family against the wishes of the other members of it, who (it is probable) sent Bulakee to get the woman dismissed, when the wounding took place.

The witnesses to the fact admits that Bulakee raised a *lattee* to strike the prisoner (and this he himself also states,) when he cut and wounded him three times with the sword, but they add that another man (Maharaj Singh) laid hold of him by the waist, when the prisoner cut at him ; and this part of the story the latter denies. Bulakee (who after recovering from his wounds died of cholera) stated to the magistrate that he was sent for by Sheobux (who kept the woman) to enter his service, and that on his refusal, he first of all cut him himself and then gave the sword to the prisoner and desired him to do so also, which he did, but there is no proof whatever of this, and I consider it (as the prisoner admits) a case of simple wounding ; and as the moulvee also views it in the same light, I have, under all the facts of the case, sentenced him as noted in the proper column.

Sentence passed by the lower court.—Three (3) years' imprisonment without labor and irons, and a fine of rupees 30, in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—In appeal the prisoner admits the wounding, but urges in his defence, that Bulakee Rai, the wounded man, was attempting to ravish the woman, to whose assistance he went, when Bulakee attacked him with a *lattee*. This statement, regarding the woman, was not made at the sessions, and there seems no ground for it. All that is extenuating in the prisoner's case has met with due consideration from the judge in the sentence awarded. I see no reason to interfere.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND OTHERS
versus

CHOORAMUN (No. 1 APPELLANT,) SOOKHOO (No. 2,) AND BEHAREE (No. 3.)

CRIME CHARGED.—1st count, burglary, with theft of property valued at rupees 7-8, and 2nd count, knowingly having in their possession stolen property.

CRIME ESTABLISHED.—Burglary with theft of property valued at rupees 7-8.

Committing Officer—Mr. H. C. Raikes, assistant magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 24th September 1853.

Remarks by the sessions judge.—This daring burglary is fully established in evidence against all three defendants, who were apprehended on the spot; and the property which they had taken from the prosecutor's house and were on the point of carrying away is identified by the witnesses. I convict all three defendants on the 1st charge of the indictment, and in this finding the law officer coincides. The defendants Chooramun and Beharee having been frequently punished before, namely, the first for burglary, theft, breaking-jail and mutiny in jail, and the second, for burglary and theft, for which crimes he has been five times under trial and three times convicted, are hereby sentenced each to eight (8) years' imprisonment in banishment with labor and irons, and two (2) years in addition in lieu of stripes, altogether ten (10) years. The defendant Sookhoo is a less-hardened offender, will suffer five (5) years' imprisonment with labor and irons, and two (2) additional years in lieu of stripes, altogether seven (7) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Chooramun appeals. He says he was attending a wedding party at a friend's house, where he unfortunately got drunk ; that when he came to himself, he found himself at the thannah, and that the charge has been falsely and maliciously got up against him. The evidence to his apprehension in the house of the prosecutrix, and to his confession in the mosfussil, is quite satisfactory.

The sentence is confirmed.

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Case of
CHOORAMUN
and others.

Conviction
and sentence
on a charge of
burglary and
theft upheld in
appeal.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND KALEE GUNGA KYBURTINEE
versus
MODHOOSOODUN KYET DUTT (No. 1,) AND TARA-MONEE KYETNEE (No. 2.)

NUDDEA.

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MODHOOSOO-
DUN KYET
DUTT and
another.

Prisoner
convicted as an
accomplice in
the murder of
a child for the
sake of its or-
naments, sen-
tenced to trans-
portation for
life. Another
prisoner con-
victed of re-
ceiving the or-
naments thus
acquired, sen-
tenced to seven
years' im-
prisonment.

CRIME CHARGED.—Prisoner No. 1, 1st count, wilful murder of Sosseemookhee Chookree, daughter of the prosecutrix, Kaled Gunga Kyburtinee, on account of her ornaments, and 2nd count, robbing from the person of the deceased Sosseemookhee Chookree gold and silver ornaments to the value of rupees 14; and prisoners Nos. 1 and 2, knowingly receiving and keeping in their possession a portion of the ornaments, *viz.*, a pair of silver *balas*, obtained by murder and robbery of the deceased Sosseemookhee Chookree.

Committing Officer—Baboo Issur Chunder Ghosaul, deputy magistrate of Santipore, Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 18th November 1853.

Remarks by the officiating additional sessions judge.—The prisoners are respectively charged with murder and robbery, and receiving and having in possession stolen property, knowing it to have been acquired by murder and robbery, and plead *not guilty*. They stand to each other in the relation of mother and son.

On the day of the murder, towards evening, the male prisoner went to the house of the prosecutrix to get a drink of water. A mendicant arrived at the same time and asked alms. The requisition of the former was not complied with, owing to want of leisure on the part of the prosecutrix, but the wants of the latter were supplied by her daughter, a young girl between 9 and 10 years of age. While so employed, she appears to have been seized suddenly by a man of the name of Bhuta *alias* Sreenath, a Brahmin, who resides hard by, and forcibly carried off, with the assistance of the prisoner Modhoosoodun Kyet and one Kangalee, into a lonely spot, and there murdered and stripped of the ornaments she wore. The killing is alleged to have been done by the Brahmin, by breaking the neck of his victim with his hands by main force. The deceased had on her person a pair of silver bangles, a pair ditto armlets, a pair ditto anklets, a ditto waist chain, and a gold nose-ring, and it was obviously for the sake of these ornaments that she was murdered. Her body after the murder is said to have been thrown into the Bhaugiruttee and carried down by the stream, which is a rapid current at that season of the year. The prisoner Modhoosoodun Kyet admits having been present at the

murder, having participated in it to the extent of assisting to secure the deceased in her struggles to get free when first seized by the Brahmin Bhuta, having received a pair of bangles as his share of the booty, and having deposited the same with his mother, the prisoner Taramonee Kyetnee, and that individual confesses having received and held in possession the said silver bangles, knowing them to have been acquired by murder and robbery. She subsequently produced the ornaments from the party to whose charge she had consigned them temporarily.

Such are the particulars and history of this case, but the only evidence against the prisoners are their confessions and admissions of crime, both before the police and the deputy magistrate. These, however, are clear and consistent, and are corroborated by the finding of part of the ornaments of the deceased in the place where they were deposited by the receiver, the female prisoner.

There is no direct evidence of the murder whatever, and the body has not been found, but no possible motive can be assigned for the prosecutrix making a false complaint or charging the prisoners with so grave an offence. So far from it, her suspicions appear to have fallen on the Brahmin Bhuta *alias* Sreenath, in the first instance. The promptitude and readiness with which the prisoners confessed the crime, on being arrested by the police, and the consistent tenor of those confessions from first to last, coupled with the recovery of the silver bangles and futility of the defence set up, create a violent and irresistible presumption of the prisoner's guilt on the mind, and in concurrence with the *futwa*, I convict them.

Under these circumstances, I would sentence the prisoner Modhoosoodun Kyet as an accomplice in the wilful murder of the girl Sosseemookhee for the sake of her ornaments, and pleading for his life, on account of his youth, recommend that he be imprisoned for life in transportation beyond sea with labor in irons; and I convict the prisoner Taramonee Kyetnee with receiving property, knowing it to have been acquired by murder and robbery, and sentence her to seven (7) years' imprisonment with labor suited to her sex, suspending the issue of such sentence until the receipt of the Court's final orders on this reference.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The prisoner No. 1, Modhoosoodun, confessed before the police and the deputy magistrate that he was present when Sreenath Mokerjea, released by that officer, murdered the deceased Sosseemookhee, and that he received some of her ornaments, which he gave them to his mother, Taramonee, (prisoner No. 2,) who also confessed she deposited them with

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Case of
MODHOOSOO-
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DURT and
another.

Modhoo Gangolee, from whom she brought them by order of her son (No. 1.) This prisoner charged Sreenath and one Kangalee with the murder, and the prosecutrix and her brother Gobind Dass, have deposed that Sreenath, on their promising him rupees 5, said he would produce the deceased. Both Sreenath and Kangalee were, however, not committed to the sessions.

There is some reason to doubt whether the prisoner alone was the actual murderer of the deceased, but there is ample proof that he countenanced the deed and shared in the spoil. To this extent he may be safely convicted, whether his accusation of those he named be true or false. I therefore confirm the sentence, which the sessions judge proposes to pass on him. The prisoner No. 2 kept the ornaments, which she says her son (No. 1) gave her, knowing how they had been procured, and has been justly sentenced by the sessions judge to seven (7) years' imprisonment with labor.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

CHOONEE (No. 1 APPELLANT,) PUTTEE (No. 2,) AND
CHOTOO (No. 3.)

CRIME CHARGED.—Dacoity attended with assault and wounding, and plunder of property, amounting in value to rupees 128-11.

CRIME ESTABLISHED.—Dacoity with slightly wounding.

Committing Officer—Captain Thomas Simpson, principal assistant of Hazareebaugh.

Tried before Major J. Hannyngton, deputy commissioner, Chota Nagpore, on the 20th September 1853.

Remarks by the deputy commissioner.—It appeared in this case, that the prosecutor had returned from Demerara, and that about 15 or 20 days afterwards, his house was entered, on the night of 31st May last, by a gang of dacoits. When outcry was made, some of the villagers came to the prosecutor's aid, and one of them, named Narain, having a sword, wounded therewith three of the gang. The dacoits appear to have had no arms but staves, and with these they dealt some blows on the said Narain and one Goho Singh. They then decamped with some property. Next day they were traced a considerable distance by blood-marks on the ground, but finally this trace was lost, and no further clue was obtained till one Kartoo Singh mentioned that a cow-herd of Douat village had been concealing himself. This led to the apprehension of the prisoner Puttee, who immediately confessed and gave up a brass

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Case of
CHOONEE and
another.

Prisoners
convicted of
dacoity with
wounding, sen-
tenced to ten
years' im-
prisonment.
Ap-
peal rejected.

vessel belonging to the prosecutor, and some other property which he had obtained by a highway-robbery, for which he stands arraigned. This prisoner named the prisoners Nos. 1 and 3, with several others, as his associates in the dacoity. The prisoner Choonee and Chotoo both made confession before the police officer to a similar effect. They did not give up any property. All three prisoners had wounds on them, Puttee a wound on the the *left* elbow-joint, Chotoo a cut on the *left* shoulder and *left* cheek, and Choonee two wounds on the outer fingers of the *left* hand. Puttee and Choonee repeated their confessions before the principal assistant, but Chotoo retracted his. The jury found the prisoners Nos. 1 and 2 *guilty* as charged, and No. 3 *guilty* as an accomplice. In my opinion the crime, as charged, is fully proved on all three prisoners. It is not a little remarkable, that *all three are wounded on the left side*, and that the witness Narain stated to the police officer on the 2nd June, prior to the apprehension of the prisoners (which occurred on the 6th June,) that the dacoits had faced him, and that *he had wounded them on their left sides*. The inference from this, that these three prisoners were wounded by Narain, is very strong. I therefore find the prisoners *guilty* as charged.

Sentence passed by the lower court.—Imprisonment for ten (10) years each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner Choonee appeals.

The confessions are duly attested, and I see no reason to doubt that they were perfectly voluntary.

The sentence is confirmed.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

HEERA SINGH.

CRIME CHARGED.—Perjury, in having, on the 28th June 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Sasseeiram, zillah Shahabad, that Soobhoo Dosad was not at the window at the time the assault took place, and he did not see him catching the hair of Kasee Singh, but heard that he (Soobhoo) was present at the time of the assault and had hold of Kasee Singh's hair ; and in having, on the 22nd July 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Shahabad, that he saw Soobhoo Dosad seize the hands

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Case of
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another.

SHAHABAD.

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Case of
HEERA SINGH.
Prisoner
convicted of
perjury, senten-
tenced to seven
years' im-
prisonment. Ap-
peal rejected.

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Case of
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of Kasee Singh, deceased, when he was beaten: such statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. A. A. Swinton, magistrate of Sasseeram.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 10th August 1853.

Remarks by the sessions judge.—The prisoner in this case was committed for trial on a charge of perjury, committed while giving evidence before the court in a case of homicide No. 6, of statement for July 1853.

Before the deputy magistrate, he had distinctly stated, that he had not seen any one of the prisoners in that case during the assault, but that he had only heard he had been present.

Before the sessions court he swore that he had himself seen the same man aiding and abetting in the outrage.

The contradiction was palpable and glaring, and as there was evidently a great effort on the part of the prosecution to inculpate the prisoner Soobhoo Dosad, I am under the strongest conviction that the latter exaggeration was intentional for the purpose of strengthening the case against him.

The prisoner admitted the perjury before the magistrate, and accounted for it by saying he was ill when he gave his second deposition. He further stated, that the first account was true, the latter the false statement—a fact which I believe, and which further corroborates my views of the subsequent intention.

Before the court he says his two statements were the same.

The *futwa* finds the prisoner guilty and declares him liable to *tazeer*.

The crime, of which the prisoner is proved guilty, is a most pernicious one and calls for condign punishment. It is perhaps impossible to avoid concealing some measure of sympathy to an ignorant man, who deviates from the truth for the purpose of saving or benefiting his neighbour, but the false witness who lies to deprive an innocent man of life or liberty is a pest of society and deserves no pity.

Had this man's statements been accepted, Soobhoo Dosad (who is a chowkeedar) would have been sentenced to seven (7) years' imprisonment. To this punishment I sentence him.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) Lalla Dookhee Nundun, mookhtar, appeared on behalf of the prisoner, and after the papers had been read, argued that the case could not properly be viewed as one of perjury, inasmuch as in the one deposition the prisoner had deposed that he had heard that Soobhoo Dosad had been concerned in the assault on the deceased, and in the other, that he knew this from

personal observation. Both depositions, he contended, are in support of the charge. It is a very different thing, however, to be an actual witness to a murderous assault, and to hear of it only from others, and the life or liberty of others is often dependent on the evidence of a single witness, one way or the other. The sessions judge distinctly says, that such was the case in this instance. Had the prisoner's testimony been received unquestioned, an innocent man would now be suffering an unjust punishment. False evidence made use of for such a purpose certainly calls for exemplary punishment.

The sentence is confirmed.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT
versus
TEERBHOOUN SINGH.

CRIME CHARGED.—Affray with wilful murder of Ajoodhea Singh and Raingolam Singh on one side, and Jykishen Singh on the other side, and severely wounding of Sewdial Singh, Mabadoobux Singh, and Lutchmee Singh on one side.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Ajoodheea Singh and Ramgolam Singh on one side, and Jykishen Singh on the other side, and severely wounding of Sewdial Singh, Mabadoobux Singh, and Lutchmee Singh on one side.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 19th August 1853.

Remarks by the sessions judge.—The circumstances of this case were thus related in statement No. 6 for May 1853.

This is a very serious and tragical case of affray, in which three lives have been lost and three men severely wounded.

The belligerent parties are the servants and dependents respectively, of Baboo Kour Singh and Musst. Utchrujkour, wife of the Baboo's brother, Rajputtee Singh.

Rajputtee Singh is *non compos*, and his wife, Utchrujkour, who has the management of his affairs, has rendered herself somewhat notorious in the district and is regarded with much disfavor by Baboo Kour Singh the head of the family.

Kour Singh is a powerful and influential zemindar, the head of the Rajpoots, a fine old gentleman in many respects, but somewhat prone to violent measures when thwarted.

Disputes and quarrels have been for some time rife between Kour Sing and Utchrujkour, and much bitterness and hatred

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Case of
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SINGH.

Prisoner convicted of affray with culpable homicide and severe wounding, sentenced to seven years' imprisonment. Appeal rejected.

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has been the result, not only between the principals, but among the servants and *attachées* also.

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SINGH.

This is beyond a doubt the real secret of this affray.

Jykishen Singh, one of the murdered men, is the servant of Baboo Kour Singh ; Ajoodhea Singh and Damgolam Singh, as well as the three wounded men are the servants of Utchrujkour.

The evidence shows that the servants of this woman were seated near a tank in the village of Jugdeespore, on the day of the *mohurrum*, with swords, shields and sticks, and that while they were seated, Jykishen, with a large body of Baboo Kour Singh's followers, came to the spot ; that words passed between them and a savage fight ensued, in which, as might have been expected, the party of Utchrujkour fared the worst, two of them being killed and three severely wounded, while on the side of Kour Singh's party, the head man, Jykishen Singh, was only injured.

He, Jyperkast, was Ajoodhea Singh's deadly personal enemy.

The presence and participation of all the prisoners is established, by the evidence of several eye-witnesses unconnected with either party.

The prisoners Nos. 1 and 2, of the supplementary calendar, set up a plea of *alibi* and brought forward numerous witnesses to establish the fact, but their evidence completely broke down on cross-examination.

They are own brothers of Jykishen Singh, the leader of the Baboo's party, and the only respectable men on that side who have been arrested. A great effort has accordingly been made to obtain their acquittal.

The pleas of the prisoners Nos. 7, 8 and 9 have only reference to the details of the affray and the part taken by each.

Prisoners Nos. 10, 11, 12 and 13 say, that they were two *coss* off. Prisoner No. 14 that he was at the distance of seven *coss*. No. 15 that he was in his village at three *coss*. No. 16 that he was two *coss* off from Jugdeespore. They all gave evidence in support of their plea, but not such as to shake that for the prosecution. This case has been greatly mismanaged from the first, and I feel very confident that the true facts have been concealed.

I am strongly inclined to believe, that the occasion offered by the *mohurrum* was taken advantage of to get rid of Ajoodhea Singh, the personal and deadly enemy of Jykishen and a man peculiarly *obnoxious* to Baboo Kour Singh himself.

A few months before the affray, the magistrate had sworn the peace against Kour Singh at the instance of Ajoodhea, and his body was hacked with wounds.

The result shows, that the attacking party was by far the strongest, and though Jykishen lost his life, no others on that side were wounded at all.

Connected with this case I beg to annex copies* of the correspondence that has passed between myself and the magistrate and joint-magistrate on the subject.

I have little doubt that the misplaced courtesy, displayed towards Kour Singh, had the effect of preventing witnesses coming forward, and that the real facts have been much disguised.

The prisoner before the court evaded pursuit until the 19th June.

His presence and participation are established by the evidence of three eye-witnesses; he was named from the first by the three wounded persons on the other side. He admits having been a servant of Baboo Kour Singh, though he says he has been lately discharged.

Defence.—The prisoner pleads an *alibi*, stating that he was employed by Kour Singh, theekadar of mouzah Julpoora, as tehsildar, to collect their rents; that he remained in their service from the 1st of Bhadoon to the 27th Assin, the day after the affray; that on that date he executed a bond for the balance due from him, and that an action on the bond has since been instituted and decided against him by the moonsiff of Jahanabad.

Copy of the decision is produced.

This is, with slight modifications in detail, the defence set up by another prisoner in the same case (column No. 4, statement No. 6,) and the trick is far too palpable to escape detection.

Three witnesses support the plea, deposing that the prisoner was employed as tehsildar of mouzah Julpoora and others in zillah Behar, from the 1st of Bhadoon up to the 27th Assin, (*i. e.* the day after the affray,) and that they paid rent to him, and that from the 21st of Assin to the 27th the accounts were being taken.

They at the same time admit, that the theekadars of the above village never had a tehsildar before, but always collected the rents themselves.

This story is too improbable to deserve credence, and I have no hesitation in rejecting it.

The prisoner has evidently been actively engaged (while evading the pursuit of the police) in concocting a story for his exculpation, and like the prisoner Hoonooman Singh, in supplementary calendar No. 4, has contrived to execute a document *the day after* the affray, and have a suit instituted and decided against him during the interval.

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The utter improbability of this transaction at once betrays the trick, which becomes more palpable from having been brought into play twice in the same case.

The prisoner admits having been formerly in the employ of Baboo Kour Singh, who was named by Mabadoobux Singh, one of the wounded parties.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Moulvee Murhumut Hossein appeared for the prisoner and Baboo Sunbhoonath Pundit for Government. The former argued, that the prisoner is entitled to his release, even on the showing of the witnesses for the prosecution, as, although they declare that he was present during the affray and had a sword, yet they also say, that they did not see him make use of it. If a man be seen with a sword in the midst of an affray, in which three men are killed, and several others badly wounded, it may be reasonably enough presumed, that he was not there as a disinterested party; but the evidence against the prisoner is much stronger than the pleader is willing to allow. He was named as one of the attacking party by the wounded man, Mahadeo, immediately after the affray and by the witnesses named by him, two of whom have now given evidence on the trial; and he was also named in the first statement of Lutchmee Singh, who deposed on oath, that he had himself been wounded by Teerbhooun Singh.

The pleader has not pressed the matter further, and I think he has acted wisely; for the defence, as resting on the *alibi* attempted to be proved, is utterly worthless.

The sentence is confirmed.

PRESENT :
 A. J. M. MILLS, Esq., }
 AND } *Judges.*
 H. T. RAIKES, Esq., }

GOVERNMENT

versus

PEERBUX NUDAF (No. 28,) RUNNOO FAKEER (No. 29,) SHEIKH BUDDOO (No. 30,) MUTTEE NUDAF (No. 31,) SHEIKH NUZOO (No. 32,) AND SHEIKH AUZMUT (No. 33.)

CRIME CHARGED.—Affray with murder.

Committing Officer—Mr. E. C. Craster, officiating joint-magistrate of Maldah.

Tried before Mr. James Grant, sessions judge of Dinapore, on the 7th October 1853.

Remarks by the sessions judge.—On the 5th June 1853, there was an affray between the people of an indigo planter and those of a zemindar, caused by the former carrying off bullocks from the plough and the latter endeavoring to rescue them, when they were opposed and one of them killed. The indigo factory and the zemindar's house in Noorpore are close together west and east. The bullocks were ploughing south-west of Noorpore; and the zemindar's people, apparently to prevent their being taken into the factory, were passing within some 200 yards of it, when they came in contact with the other party, and the deceased fell mortally wounded. The parties then retreated towards the factory and to Noorpore, and a few of the zemindar's people returned to the wounded man, who was speechless and died almost immediately. The civil surgeon states, that death was caused by two wounds, one penetrating the chest and right lobe of the lungs, and the other mangling the spine. The skull also was broken, and it would appear that the sword-cuts were inflicted after he fell wounded by *fursas* or *soolfees* thrown from some distance. The thannah mohurir and two burkundauzes, who had been sent some days before to prevent disturbances between the parties, and were within a few yards of the combatants, had the body taken to Noorpore, and shortly afterwards observed the factory stable on fire. They afterwards were prevented by armed men from entering the factory, and on the following day the darogah was treated in the same way, and afterwards, on the arrival of 50 peadahs sent to his assistance by the magistrate, no armed men were forthcoming in the factory. The prisoner No. 28, Peerbuix Nudaf, the factory jemadar, states in his petitions and answers, that the factory cattle were carried off from the plough by the zemindar's people, who killed

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PORE.

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Case of
PEERBUX
NUDAF and
others.

Prisoners charged with affray with murder acquitted owing to the contradictory nature of the evidence. Conduct of the magistrate in not proceeding to the spot noticed by the Court.

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Case of
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others.

three of his men sent to the rescue, namely, Nazir Takeer, Golam Allee and Zoomeeroodeen ; that the body found was that of Nazir Takeer, not that of Kaeem Khan ; and that the bodies of the other men were carried off by the zemindar's people. There are in the record several petitions from Mr. Taylor, the proprietor of the factory, and Mr. Morton, his assistant in charge, stating that the factory was attacked, three men killed and a house set on fire ; that the zemindar's relations are notorious disturbers of the peace ; that the inhabitants of the neighbourhood and the police are in their interest, and requesting that the case might be investigated by a disinterested darogah ; but no serious attempt seems to have been made by them to prove that three of their men had been killed ; that the body produced was not that of Kaeem Khan, or that their bullocks and not those of the zemindar's people were carried off. The evidence on the other side, as to Kaeem Khan having been killed and the zemindar's bullocks having been carried off, is abundant and clear, and supported by the fact that the zemindar's bullocks were found by the police near other factories belonging to Mr. Taylor, including one or more on the opposite side of the Ganges. The explanation attempted is that their opponents may have sent the animals there. Nothing could be more unsatisfactory than the manner in which the case was conducted. The zemindar's people, who, in the first instance, appeared as witnesses, were subsequently sent in as prisoners. The investigation was commenced by a darogah, who was shortly afterwards summoned to Moorschedabad in a murder case, in which the Nawab's people were concerned and finished by another, who, in consequence of the confusion in which he found the papers, asked for permission to re-investigate, and the main object of the respective parties appears to have been to find witnesses to swear that they had seen Mr. Morton and his dewan, or the relations of the zemindar, in the affray or attack. The only evidence taken in this case, on which dependence can be placed, is that of the police, a mohurir and two burkundauzes. A servant of the zemindar's told them the bullocks were being taken away, and they arrived at the spot just as the affray commenced. The mohurir states, that the prisoners Nos. 29, 31, 32 and 33 were in the zemindar's party, but allows that he stated in the foudary that Nos. 31 and 32 subsequently came from a mango tree at some distance and assisted in removing the body. Beedahput Singh, burkundauz, states that the prisoner No. 28, Peerbux, ordered and joined in the attack. The other burkundauz states, that he recognized No. 28, Peerbux, at the end of the affray, as the parties were separating. The first burkundauz states, that he saw

Nos. 29, 30 and 32 in the affray, and that Nos. 31 and 33 came afterwards and assisted in removing the body. The second burkunduz states, that the prisoners Nos. 29, 30, 31, 32 and 33 were retreating with the zemindar's party and returned each with a *lattee* in his hand to where the body was. This certainly is not over satisfactory evidence, but I consider it sufficient for the conviction of No. 28, Peerbux, and also for the conviction of the other prisoners, as they themselves allow that they were near enough to see and to hear what was going on; and I can see no ground for supposing that the mohurir or burkundauzes named any man who was not actually in the affray, though it is more than probable that they, and the mohurir especially, thought it advisable not to name all they might have named. The *futwa* of the law officer acquits the prisoners on the ground of improbability and discrepancy in the evidence of the burkundauzes and contradiction in that of the mohurir, the improbability being that of a witness being able to speak to particulars as to weapons and persons, and discrepancy in two witnesses standing near each other, one of whom heard No. 28, Peerbux, order the attack, and the other did not observe him until the parties were separating. I cannot concur. There is nothing suspicious in the evidence of the burkundauzes, as they show no favor to either party, and it is quite possible that, looking on together at an affray of the kind, one man may observe what the other does not. The contradiction in the mohurir's evidence only affects some of the other prisoners as to their position during the affray, and their own answers show that they were near enough to speak to the particulars of the fight. With reference to the amount of punishment of the respective parties, the following appear to be the circumstances under which the affray took place:—Some 16 ploughmen, with 150 head of cattle, were ploughing for the zemindar, the deceased "Kaeem Khan" being the duffadar in charge. A large party of armed men from the factory approached, when the deceased directed the ploughmen to disperse while he went for assistance to the zemindar's village. While some of the factory men were driving off the cattle, the zemindar's party, headed by armed men, issued from the village, and while passing towards the cattle near the factory, were opposed by the factory party, when "Kaeem Khan" was killed by sundry spear and sword wounds.

This, in my opinion, amounts to affray attended with murder, as the factory party first acted illegally in carrying off the cattle and again in opposing the other party while going to their rescue. The prisoner No. 28, Peerbux, was the leader of the factory party, and I would sentence him to fourteen (14) years' imprisonment, with labor and irons. The

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other prisoners were of the zemindar's party, with the object of recovering their own cattle or of assisting their friends whose cattle had been driven off, and I would sentence them each to five (5) years' imprisonment, with labor and irons. The investigation of this case was commenced with Beepinbeharee, the zemindar's gomashta, who first gave intimation to the police of the probability of an affray as prosecutor, but afterwards he and his witnesses were transferred to the prisoner's list by order of the joint-magistrate, who directed the darogah to admit as witnesses only men who were not connected with either party. This, I think, was unfortunate, as from the evidence of the police, it is clear that "Beepinbeharee" and some other men who were close to them took no part in the affray. I can see no objection to the evidence of these men being now taken in respect to the parties concerned in the affray, who have not been committed for trial.

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. J. M. Mills and H. T. Raikes.)—We concur in opinion with the law officer that the evidence of the eye-witnesses for the prosecution, even before the sessions, is discrepant and unsatisfactory. Moreover, on referring to the mofussil proceedings, we find that only one witness, Buddiaput Burkundauz, recognized one of the prisoners (*viz.* Peerbx) now under trial; and his statement, as regards the part taken by that prisoner in the affray, is grossly contradictory, inasmuch as he alleged before the darogah, that he did not know who was the leader in the affray, whereas he deposed before the sessions judge and the magistrate, that the prisoner, in his hearing, gave orders to his followers to attack the zemindar's party. The mohurir and the two burkundauzes, though they named the prisoners Nos. 29 to 33 on the part of the zemindar and described their respective acts, by which they identified them before the magistrate and the sessions court, yet omitted to name any of them to the darogah, when they deposed to the recognition of several others not yet apprehended, and particularly asserted that they neither knew the names nor the persons of those who brought and placed the body in their charge. Further, the mohurir stated, that he did not see Peerbx in the affray, and the other witness, Mahabollah Burkundauz, did not, to the darogah, speak to his presence in it, though he had been pointed out to him as admitted by himself, by the zemindar's gomashta, shortly after the affray, as having been prominently concerned in it. Such variations and palpable contradictions, as regards the recognition of the prisoners now under trial, preclude the Court from placing reliance on the evidence of the police officers. They therefore acquit the prisoners and direct their release. It is to be regretted, that when the

magistrate was informed that the police was denied access to the factory, where the *lattéals* had taken refuge, he did not himself proceed to the spot and take the investigation of the case into his own hands, instead of sending the nazir and 50 peons to apprehend the rioters: it seems to the Court that had he acted with vigor and promptitude in the investigation of this case, the real perpetrator of this daring outrage, would ere now have been brought to justice, of which there now appears very little chance.

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Case of
PEERHUX
NADAF and
others.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT*versus***JADOO ROY BAGDEE.**

CRIME CHARGED.—Dacoity on the 10th of May 1853, and receiving portions of the plundered property knowingly.

HOOGHLY.

CRIME ESTABLISHED.—Dacoity and receiving portions of the plundered property knowingly.

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Committing Officer—Baboo Kissory Chand Mitter, deputy magistrate of Jehanabad.

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Case of
JADOO ROY
BAGDEE.

Tried before Mr. J. S. Torrens, sessions judge of Hooghly, on the 4th July 1853.

Conviction

Remarks by the sessions judge.—The prisoner pleads *not guilty*: he has been convicted on the confessions which he made before the magistrate and the darogah, which appear to have been unconstrained and voluntary, and sentenced to eight (8) years with labor and irons.

and sentence
on a charge of
dacoity affir-
med in appeal.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Both of the confessions are fully attested, and they contain inherent evidence of their having been made quite independently of any interference on the part of the authorities; they are supported, moreover, by the finding of property admitted by the prisoner to form part of that obtained by the dacoity, identified by the prosecutor and his witnesses, and corresponding with some of the articles entered in his list of articles missing.

The sentence is confirmed.

PRESENT :
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND MUSST. DHUNNI
versus
MOHAMED ASGUR.

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GUNGE.
—
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December 17. CRIME CHARGED.—1st count, burglary, in which property to the value of rupees 53-14-3 was carried off, and 2nd count, knowingly receiving stolen property.

Case of MOHAMED ASGUR. Prisoner convicted by the sessions judge of knowingly having in his possession stolen property, acquitted in appeal.

CRIME ESTABLISHED.—Knowingly having in his possession stolen property.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 15th August 1853.

Remarks by the sessions judge.—The burglary occurred in April 1850. Four persons were committed and tried upon the offence at the sessions for May of that year, and the following is an extract from the remarks then recorded by the sessions judge :—

“ It appears from the statement of the prosecutrix, that on the last day of *Cheyt*, day not remembered, she and witnesses Nos. 20 and 21 were sleeping in her house, when about 4 o'clock in the morning she was awoke by a cry of ‘thief’ from witness No. 21. The prosecutrix got up, saw the padlock of her box had been removed and three persons making their exit from the house ; on her way to the thannah, she met two fishermen, who mentioned having just apprehended two men with their boat. The prosecutrix accompanied them and saw prisoners Nos. 6 and 7, who admitted having stolen rice, salt and oil from her eastern house, which they had thrown in the river, and mentioned prisoner No. 8 and another man called Asgur who had stolen articles from the other house. The property stolen amounted to about rupees 57 and some annas, consisting of clothes, a necklace, a silver ornament taken from the ankle of witness No. 21, and rupees 28 in cash and a four-anna piece, and rice, salt, oil and other materials for cooking, the former stolen from the house in which the prosecutrix and her companion slept, which was effected by making a hole, and the other property stolen from the cooking-house, the *jhaup* of which had been cut. The prosecutrix recognized part of the property which had been recovered, consisting of clothes.”

The prisoner now at the bar is the Asgur alluded to in the confessions and from whom Hoorai Sheekdar bought the ornament. An appeal against the judge’s finding, in respect to this person, was preferred to the Nizamut Adawlut, who, in their proceedings of date the 23rd of August 1850, observed

that they saw no reason to interfere with the judge's conviction and sentence.

It appears from a report of the *darogah* of thannah Kewarec, that the prisoner, as soon as he discovered that he was implicated in the case, fled with his family from the village of Kewaboneah. His recent apprehension was by a *bukundauz*, who met him accidentally, and who fortunately had known him before.

His defence is, that he is altogether innocent of the charge, and that he is ignorant of the motive which induced Dhunnoo (a prisoner in the original trial) to implicate him. He affirms that he brought a charge of dacoity against one Mahomed Ukbur, who, out of revenge, has probably induced Dhunnoo, one of the *ryots*, to implicate him (prisoner) in his confession.

The evidence against him is chiefly presumptive. Only one witness was present when he sold the silver ornament, which was proved to have been part of the stolen property, at the original trial, to Hoorai Sheekdar. Hoorai himself, since the prisoner's apprehension, identified him before the *darogah* as the party who sold him the ornament. Hoorai pleaded this in his defence at his own trial, on the establishment of which plea he was convicted of having stolen property, and the confessing prisoners affirmed that the prisoner was with them taking part in the commission of the burglary. His flight and subsequent concealment indicate conscious guilt, and I think, though the direct evidence is scanty, the corroborative facts are strong and sufficient to sustain a conviction for having in his possession stolen property, knowing it to have been stolen. The jury found the prisoner *guilty* of having in his possession stolen property, and as the record afforded evidence of the prisoner being a man of bad character and of having been twice formerly convicted of like offences, I sentence him to imprisonment for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner is convicted by the sessions judge of having stolen property in his possession, knowing it to be such. He denies the charge. The property is not produced in the trial. It was a *kharoo* sold to one Hoorai Sheekdar, convicted in a former trial, who said he got it in pledge from the prisoner. Two other prisoners were at the same time tried and convicted. The prisoner Asgur absconded and was recently only apprehended. The statements of the above prisoner are not evidence against Asgur in this trial. Two witnesses have been brought forward and swear they were present when Hoorai Sheekdar took the *kharoo* in pledge from the prisoner some three years ago. One of them had never seen him before. The other, in the sessions court, states his inability to recognize

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the prisoner as the person who was dealing with Hoorai, though he afterwards says the prisoner was walking away from the spot. The property not having been produced, and of course not recognized as stolen property, and in the absence of any proof of the prisoner's possession of it, the conviction is not good. The prisoner must be released on this charge. Though the sessions judge has set forth the prisoner's previous conviction and bad character as the grounds for enhanced punishment, I have been unable to find any official report to that effect filed with the record.

PRESENT :
A. DICK, Esq., Judge.

GOVERNMENT AND ANOTHER

versus

MOOLOOKCHAND JOGEE (No. 1,) SHEIKH BANDOO (No. 2,) SHEIKH PYLUN (No. 3, APPELLANT,) AND SHEIKH PURAN (No. 4, APPELLANT.)

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Case of
SHEIKH PY-
LUN and
others.

In appeal
from a convic-
tion of bur-
glary and theft
and receiving
stolen prop-
erty, one prison-
er was acquit-
ted.

CRIME CHARGED.—Nos. 1, 2 and 3, 1st count, burglary in the house of the prosecutor and stealing therefrom property valued at Company's rupees 187-3-15 ; 2nd count, accomplices in the above crime; 3rd count, possessing stolen property, knowing it to have been obtained by the above burglary, and 4th count, privity to the above crime. No. 4, 1st count, having in his possession stolen property, knowing it to have been obtained by the above burglary ; 2nd count, accessory after the fact, and 3rd count, privity to the above crime.

CRIME ESTABLISHED.—Nos. 1 and 2, burglary and theft in the prosecutor's house, and Nos. 3 and 4, receiving and having in possession property knowing the same to have been acquired by burglary and theft.

Committing Officer—Mr. C. W. Mackillop, officiating magistrate of Dacca.

Tried before Mr. G. P. Leycester, officiating sessions judge of Dacca, on the 6th September 1853.

Remarks by the officiating sessions judge.—From the evidence in this case, it appears that on the night of Thursday, the 30th June last, a burglary was committed in the house of the prosecutor, and cash and property, amounting in all to the value of rupees 187, was stolen : suspicion fell on the prisoners who were apprehended, and Moolookchand Jogee and Sheikh Bandoo confessed before the police and the magistrate, and some of the stolen property was found in their houses and in their premises.

In the house of Sheikh Pylun, other portions of the stolen property were found, and in that of prisoner No. 4, Sheikh

Puran, a piece of melted gold, which there can be no doubt, from the statements made by him, is the produce of the two gold runts stolen from the prosecutor's house by the burglars, and made over to him (Puran) by his father, Sheikh Rohim, and melted down by him. The evidence in defence in no way exculpates the prisoners. The *futwa* convicts the first two prisoners of the burglary and the other two of the receipt of the stolen property, knowing it to have been stolen. Concurring in this finding, I have sentenced prisoners Nos. 1 and 2 to five (5) years' imprisonment with labor in irons, No. 3 to four (4) years' similar sentence, and No. 4 to three (3) years' ditto.

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Case of
SHEIKH PY-
LUN and
others.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick.) The Court see no reason to interfere with the sentence passed against this prisoner—"Pylun." They desire, however, that the witnesses to the search for property in houses be carefully questioned, so as to satisfy the Nizamut Adawlut, in case of appeal, that the search has been conducted in every respect as the law directs.

The only evidence against this prisoner, "Puran," is merely presumptive, and his witnesses have testified to his means of livelihood being sufficient and respectable, and his previous character unsuspected, and that his interests are separate from his father's. Therefore, the Court, not satisfied of his guilt, acquit him and order his release.

PRESENT :
A. DICK, Esq., Judge.

GOVERNMENT AND HURKOO AHEER

versus

BAIJ ROY (No. 2) AND SUDDOO ROY (No. 3.)

SHAHABAD.

CRIME CHARGED.—Riot attended with culpable homicide of Munshur Aheer, and wounding Hurkoo Aheer, the prosecutor.

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Case of
BAIJ ROY and
another.

CRIME ESTABLISHED.—Riot attended with culpable homicide of Munshur Aheer, and wounding Hurkoo Aheer, the prosecutor.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 12th July 1853.

Remarks by the sessions judge.—The fact of this riot with homicide is clearly established. The darogah, in the first instance, sent up all the parties concerned as *guilty* of affray, owing to a dispute in regard to a female relation of the defendant, but the magistrate made one party prosecutor and put the

conviction and sentence passed by the sessions judge in a case of riot attended with culpable homicide and wounding, upheld in appeal.

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others on their defence, giving the preference to the evidence on behalf of the former.

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Case of
BAIJ ROY and
another.

I am inclined to take the contrary view.

The fact, as stated by the plaintiff and his witnesses, are that some thatching grass belonging to the defendant having been sold at the instance of their landlord, in satisfaction of arrears of rent due, it was purchased by one Peerbux Khan and placed in charge of Bhageerut Aheer, the chowkeedar of the village and own brother of the prosecutor; that some 20 days afterwards, the prisoners attempted to remove the grass, and being prevented by the prosecutor and the deceased (his uncle,) they attacked them with clubs, killing Munshur and wounding the prosecutor.

The fact of the assault is clearly established and the death of the deceased is shown, by the medical officer's evidence, to have been caused by the blows received.

But I entirely disbelieve the cause assigned, and consider the presumption is strongly in favor of the account given by the defendants and their witnesses.

Their statement is, that Bhageerut Aheer, the chowkeedar, (witness No. 12,) had formed an illicit connexion with Musst. Punchotee, the prisoner's (No. 8) sister-in-law, and enticed her from their house, and that the quarrel arose on this account.

It appears on cross-examination of the prosecutor and his witnesses, that bitter enmity, exhibiting itself in reciprocal counter-charges, has existed during the last three years between the prosecutor, his brother Bhageerut, and the prisoner No. 2.

The story of the sale and purchase of the prosecutor's grass by Peerbux, for the sum of one rupee, is a very lame and suspicious tale, and the fact of its having been placed in charge of the prosecutor's inveterate enemy, Bhageerut Aheer, though left after the sale on the prisoner's premises for nearly a month, appear to me unworthy of belief.

The evidence of the woman Punchotee confirms my suspicion.

Proffering to be a *purdau-sheen*, and to know nothing, her tact under cross-examination was remarkable, and her deportment audacious in the extreme. The *futwa* holds the prisoners *guilty* and liable to *secasut*.

Were the prosecutor's story credited, the *guilt* of the prisoners being wanton and without provocation would have been more heinous than I am inclined to consider it.

Giving credence, as I do, to the statement of the prisoners and their witnesses, as far as regards the cause of quarrel and provocation given, I view their guilt as in some measure

extenuated. I have accordingly sentenced prisoner No. 2, the father, to six (6) years' imprisonment and No. 3 to five (5) ditto.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) —The Court see no reason for interference with the sentences passed on the prisoners by the sessions judge.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND BHOJUL SAHOO
versus

UNGNOO (No. 9,) MUNGER (No. 10,) TOLWA (No. 11,) DEELOO (No. 12,) AND LAHOOREE (No. 13.)

CRIME CHARGED.—Nos. 9 and 10, burglary and theft of property valued at rupees 309-8; No. 11, 1st count, burglary and theft of property valued at rupees 309-8, and 2nd count, having in his possession stolen property, knowing at the time the same to have been obtained by burglary and theft; and Nos. 12 and 13, having in their possession stolen property, knowing at the same time the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—Nos. 9 and 10, burglary and theft of property valued at rupees 309-8, and Nos. 11, 12 and 13, having in their possession stolen property, knowing at the same time the same to have been obtained by burglary and theft.

Committing Officer—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 20th July 1853.

Remarks by the sessions judge.—Prisoners Nos. 9, 11, 12 and 13 plead *not guilty*. No. 10 pleads *guilty*.

On the night in question, or rather towards the morning of the 16th of March, prosecutor, a shop-keeper and muhajun of Chuck Dewan, was sleeping in his shop, when he was awoke by a neighbour calling out "thief." He went out and saw two men running away. On returning to his shop, he perceived a sind, large enough for a man to pass through under the chowkut of his south door, and ascertained that the property, as per list rendered at the thannah, had been abstracted. He immediately gave notice at the Sheikpoora thannah, stating that he suspected Panchoo Moosuhar and Fukeera and Boodhun, chowkeedars of his own mohullah. Three lattees were found at a corner near his house—of these one belonged to Fukeera and another to Boodhun. These chowkeedars being thus suspected, used their best endeavours to trace the real thieves, and getting some clue, followed it up to mouzah Jysuth, where

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Case of
BAIJ ROY
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Case of
UNGNOO and
others.

Conviction
and sentence
passed by the
sessions judge
in a case of
burglary and
theft, upheld
in appeal.

1853. the prisoners live. Their houses being searched, property sworn to as part of that stolen was discovered.

December 19. From Deeloo's house, 3 *lotahs* and 3 *thalees* and 7 pieces of cloth, the *lotahs* and *thalees* concealed under some dried cow-dung near the house.

From Munger's house, 1 piece of coarse cloth.

From Tolwa's house, 2 *dhooties* and 1 piece of cloth.

Teluck (witness No. 18) produced from his own house several articles, which he swears were brought in and deposited by Lahooree's wife.

Nothing was found in Ungnoo's house.

Ungnoo (prisoner No. 9) confessed both in the mofussil and before the magistrate to have been concerned in the burglary and theft, and the latter confession has been duly attested before this court.

Munger (prisoner No. 10) ditto ditto ditto, repeating the same before this court.

Tolwa (prisoner, No. 11,) denies all participation in the crime, and says his home is seven *coss* distant from that of the other prisoners: some property, however, identified as part of that stolen, was found on his premises, and his name is associated with their own by both the confessing prisoners, (Nos. 9 and 10.)

Deeloo (prisoner, No. 12,) in whose house a quantity of the stolen property was found, says it was brought there and left by Munger, without his (Deeloo's) knowledge.

Lahooree acknowledges his wife having taken the property discovered by Teluck (witness, No. 18,) to Teluck's house, because, hearing the darogah was coming to search her house, she was afraid the property might be thought to be stolen, while in fact it was their own.

The witnesses produced by prisoners, Nos. 11, 12 and 13, speak generally to their good character. Nos. 9 and 10 name no witnesses.

The jury bring in a verdict of *guilty* of burglary and theft against prisoners, Nos. 9 and 10, and *guilty* of receiving stolen goods, knowing them to be stolen, against prisoners, Nos. 11, 12 and 13, in which I concur.

There are no old offenders among the prisoners. I convict prisoners, Nos. 9 and 10, of the burglary and theft charged against them, and sentence them—Ungnoo (No. 9) and Munger (No. 10) to five (5) years' imprisonment, with labor and irons.

I convict prisoners Nos. 11, 12 and 13 of having in their possession stolen property, knowing the same to have been obtained by burglary and theft, and sentence them—Tolwa (No. 11,) Deeloo (No. 12) and Lahooree (No. 13) to three (3) years' imprisonment, with labor and irons.

The prosecutor having produced no one witness to speak to the probable amount of stolen property, and the vast number of brass and copper utensils, which, according to his own account, make up the sum of losses, amounting to 301 pieces, besides 75 *thans* of cloth, appearing to me incredible, I award a fine of rupees 100 only to be levied from the five prisoners, jointly and severally, under Act XVI. of 1850. The recovered property to be restored to the prosecutor.

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December 10.
Case of
UNGNOO and
others.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoners Nos. 9 and 10 confessed in the mofussil and before the magistrate. No. 10 repeated his confession in the sessions court; their confessions are duly attested. No. 9 named no witnesses in his defence.

No. 11 denied the charge before the magistrate, but had no witnesses to cite: property Nos. 17, 18 and 19, recognized by the prosecutor's witnesses, was produced from his possession. In the sessions court he pleaded *not guilty* and summoned evidence to character, but failed to establish his plea.

No. 12 denied in the foudary court, and stated No. 10 had deposited the property found in his house: he did not endeavour to prove this, but pleaded good character.

No. 13, similarly stated, that No. 9 had left the property found on him in his house, and also pleaded good character.

The witnesses examined on the part of the prisoners Nos. 12 and 13 speak generally, and were not credited by the sessions judge.

I see no reason to interfere with the sentence of imprisonment passed by the sessions judge.

As there is no proof of the amount lost by the prosecutor, the sessions judge should not have arbitrarily fixed the amount to be levied from the prisoners. So much of his sentence is therefore reversed.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT AND BRIONATH BUNNICK

versus

RAJEEBLOCHUN NAUG (No. 1, APPELLANT,) **LUCK-**
HEENARAIN NAUG (No. 2,) AND **MUSST.** **LUCK-**
HEE (No. 3.)

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Case of
RAJEEBLO-
CHUN NAUG
and others.

Conviction
and sentence
of the sessions
judge on a
charge of bur-
glary upheld
in appeal.

CRIME CHARGED.—1st count, prisoner No. 1, burglary, by breaking open the padlock on the door of the plaintiff's house, entering therein, and stealing therefrom property valued at rupees 111-13; 2nd count, prisoners Nos. 1 to 3, knowingly receiving and possessing property obtained by the above theft, and 3rd count, prisoners Nos. 1 to 3, privity to the above theft.

CRIME ESTABLISHED.—Prisoner No. 1, burglary, by breaking open the padlock on the door of the prosecutor's house, entering therein, and stealing therefrom property; and prisoners Nos. 2 and 3, receiving stolen property, knowing the same to have been so obtained.

Committing Officer—Mr. C. W. Mackillop, officiating magistrate of Dacca.

Tried before Mr. C. T. Davidson, commissioner, with powers of sessions judge, of Dacca, on the 3rd November 1853.

Remarks by the commissioner.—The circumstances of this case are as follows:—On the night of the 11th June last, the prosecutor went to his father-in-law's house, and after eating there, returned home at about midnight. On searching his house, he found that it had been broken into and property to the amount of rupees 111-13 carried off. Immediate information was given to the police, and one Golam Alee (an old offender,) who had been working at prosecutor's house, which was under repair, was arrested on suspicion. His house was searched, but no property was found. On the 1st of July following, the prosecutor's son-in-law, Nuddearchand, saw the prisoner Luckheenarain (No. 2) offering for sale, at a shop in the city, a piece of clothing, which he recognized as the property of prosecutor's wife. The prosecutor was called, and on arriving at the shop, he caused the prisoner to be arrested, and on his being taken to the thannah, he confessed and offered to show where the other property was. He took the police to the house, in which the prisoners Rajeeblochun (No. 1) and Musst. Luckhee (No. 3) reside, and on its being searched, property Nos. 2 to 34 was found. On the police entering the house, the prisoner No. 1 scaled the wall and was endeavouring to make his escape, when he was captured by Panaoollah burkundauz. The other prisoner's (No. 2's) house was then searched, and property (Nos. 35 to 43) recovered there-

from. He was arrested with property No. 1, as above remarked, in his possession. The recovery of the property from the houses of the prisoners has been duly proved, and it has been recognized as that of the prosecutor by the witnesses for the prosecution. The prisoner Rajeeblocun confessed having with others committed the burglary. The answers of the other prisoner go rather to establish the charge against them than to exculpate them. The prisoner No. 1 denies his previous confession, but has set up no good defence: neither have the other two. The witnesses called by them have said nothing exculpatory in their behalf. It appears from the foudary record, that the prisoner Rajeeblocun is a notorious offender, having been seven times convicted, five times of theft, &c., by the magistrate, and twice in the sessions court of burglary, when he was sentenced on the first occasion to five (5) years, and on the second to seven (7) years' imprisonment. The *futwa* of the law officer convicts the prisoner Rajeeblocun of burglary, and Luckheenarain and Musst. Luckhee of having stolen property in their possession, knowing it to have been so obtained, in which finding I concur. Rajeeblocun, (the prisoner No. 1,) with reference to his notoriously bad character, as stated above, has been sentenced to fourteen (14) years' imprisonment in banishment; the other prisoners have been sentenced to minor punishments, as described in column 12 of this statement.

Sentence passed by the lower court.—Prisoner No. 1 to fourteen (14) years' imprisonment, with labor in irons in banishment; prisoner No. 2, to three (3) years' imprisonment with labor in irons, and prisoner No. 3, to one (1) year's imprisonment with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner is, on strong presumption, convicted of burglary; the evidence against him is his confession of being present while others entered the house, and of having in his possession prosecutor's property, which he states another prisoner, Luckheenarain Naug (No. 2,) gave him to keep, saying prosecutor had pledged it; but of this he offers no proof. The property from Nos. 2 to 3 was found in his house, and in that of his mistress prisoner No. 3. If he did not himself enter the house, he at least aided and abetted those who did. The prisoner is a notorious character and has already undergone twelve (12) years' imprisonment for similar offences on different occasions. His sentence is confirmed. The other prisoners have not appealed.

1853.

December 19.

Case of
RAJEEBLO-
CHUN NAUG
and others.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND RAMANUND DOSS BYRAGEE
versus

RUMUN HAREE CHOWKEEDAR.

BEERBHOOM.

1853.

December 22.

Case of

RUMUN HAREE CHOW-
KEEDAR.

Prisoner charged as a principal cannot be convicted as an accessory after the fact. Conviction as accessory after the fact to dacoity upheld.

CRIME CHARGED.—Accessory after the fact to the dacoity committed in the house of Ramanund Doss Byragee, prosecutor, on the 17th January 1853.

CRIME ESTABLISHED.—Accessory after the fact to the dacoity.

Committing Officer.—Moulee Fyzoolah, law officer, with full magisterial powers at Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 19th August 1853.

Remarks by the sessions judge.—The prisoner was convicted on the 9th May last, at the jail delivery of this district for that month, of being an accessory after the fact in the *dacoity* that took place in the prosecutor's house on the night of the 17th January last. The Nizamut Adawlut, on the 14th July, annulled the sentence, on the ground that a prisoner charged with dacoity as a principal, cannot be convicted as an accessory after the fact. The prisoner has now been committed on the latter charge. He pleads *not guilty*, but I convict him of the crime on his own confession before the darogah and before the magistrate, both of which he now freely acknowledges, and sentence him to ten (10) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The prisoner, when distinctly questioned on the point by the sessions judge, admitted his confessions in the mofussil and before the magistrate. They show, beyond question, that he was accessory to the dacoity after the fact, by placing, in the house of a third person, part of the plundered property brought to him by his son-in-law. Such conduct, on the part of a subordinate police officer, calls for exemplary punishment.

The sentence is confirmed.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MUSST. SUMPUD BEWA
versus
MUSST. JHOGOREE.

CRIME CHARGED.—1st count, culpable homicide of Musst. Musloom Bewa; 2nd count, privity to the above 1st count.

MYMPN-
SINGH.

CRIME ESTABLISHED.—Culpable homicide, by knowingly administering medicine to Musst. Musloom, to procure abortion, which caused her death.

1853.

Committing Officer—Mr. C. E. Lance, officiating magistrate of Mymensingh.

December 22.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 22nd September 1853.

Case of
MUSST.

Remarks by the sessions judge.—The deceased, Musst. Musloom Bewa, the daughter of the prosecutrix, was married to a cousin of witness No. 21, Sheikh Mogul. Her husband having died last year, she went to reside in the premises of her husband's cousin, and it appears in evidence, that she carried on an intrigue with one Sheikh Khanooah (not yet apprehended,) a servant of one Shabee Mundul. (The prosecutrix and witness No. 21 state, that Shabee Mundul also shared her favours, having, as the prosecutrix adds, heard it from her daughter when she came to see her during her last illness, while the other witnesses declare that Khanooah alone was concerned in the intrigue.) The deceased having become pregnant, Khanooah, with the view to screen himself and save the reputation of both, had recourse to the prisoner, a woman of the bearer caste, who was acquainted with medicine, to procure abortion. It further appears from the prisoner's admission before the police, that at Shabee Mundul's request she accompanied him and Khanooah to the deceased's house and gave him (Khanooah) a twig of a creeping plant (which she procured on the banks of the river near the house,) to introduce into the deceased's womb; that Khanooah then entered the house (prisoner and Shabee Mundul remaining outside,) and applied it as directed by her, which immediately began to cause pain, but Khanooah entreated her to bear it for the sake of preserving their reputation. This took place on the night of Saturday, and on Sunday the deceased began to complain of severe pain in her stomach, telling her neighbours, that it was owing to some medicine which prisoner gave her through Khanooah for the purpose of procuring abortion: she continued ill until her death on the Thursday following, the 3rd of Assar. The corpse was examined by the civil assistant surgeon, and he deposed that death was caused by miscarriage; that the

JHOGOREE.
Prisoner
convicted of
culpable ho-
micide in pro-
curing abor-
tion, sentenced
to 7 years' im-
prisonment.
Appeal reject-
ed.

1853.

December 22.

Case of
MUSST.
JHOGOREE.

womb was enlarged, as is the case in a state of pregnancy ; that there was no *fetus* in the womb, which must have been thrown away, and death ensued from haemorrhage ; that there was a large sore on the surface of the womb, to which the *fetus* had been attached, with effusion of blood in and around it ; that the miscarriage must have been caused by the introduction of a stick of a highly irritative nature into the womb (such as the piece of stick shown to him in court,) which was found in the womb ; that it was called *akul mendee* and is universally used by the natives for procuring abortion by introducing it into the womb. The prisoner, before the darogah, admitted having given the medicine to Khanooah to apply to the deceased's person to cause abortion ; and when the darogah asked her to show him the twig, she proceeded, in company with a burkundauz, (witness No. 23,) to the village of Bishenrampore, and taking a twig from the jungle, showed it to the burkundauz, that this was what she gave to Khanooah to apply. The burkundauz brought the twig to the darogah, and it was produced in this court, together with a piece of stick, which the civil assistant surgeon discovered in the deceased's womb when examining it, and they were of the same kind. Before the magistrate, the prisoner denied having given medicine to the deceased to cause abortion ; that towards the end of last Jeyt, she asked prisoner for medicine, as she was ill, and she gave her a twig, called *akul mendee*, to tie round her hand, and that she died six days afterwards of fever ; and prisoner added that she knew deceased was pregnant by Shanee Mundul. She denied her thannah confession, when it was read over to her before the magistrate, and when the twig was shown her, she acknowledged having given it to the deceased to tie round her hand. In this court, she urged that the darogah threatened and frightened her to confess, but does not remember what she said ; that in the *foudary*, she said she gave the medicine for fever, not for procuring abortion. She named witnesses to defence, of whom three said that they heard that she gave the medicine for that purpose, and two others denied all knowledge of the point on which they were cited. The *futwa* of the law officer convicts the prisoner, on strong presumption, of culpable homicide, by knowingly administering medicine to Musst. Musloom Bewa, to procure abortion, which caused her death, and declares her entitled to punishment by *acoobut*. I concur in this verdict. This is a very clear case : the prisoner admits having given the deceased medicine, although, as she says, to cure a fever, and not to procure abortion, but none of the witnesses having deposed to her having been ill with fever, there is not the slightest ground for doubting that she died from any other cause than miscarriage produced by the

introduction of the twig of a creeping plant called *akul mendee* (which the civil surgeon deposes to be of a highly irritative nature) into the womb of the deceased, which the prisoner gave her for that purpose, and which was found in the womb by the medical officer when he examined the body; and as it is notorious, that the natives in this district universally have recourse to this method of procuring abortion (according to the evidence of the civil surgeon,) I have deemed it my duty to punish this woman to the extent of my power.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor without irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—It is clear from the evidence of the medical officer, that abortion was caused by the introduction into the womb of a piece of wood or stick, with highly irritative properties; and to the procuring and bringing to the house occupied by the deceased, a stick of such a nature, and for such a purpose, the prisoner made confession in the mofussil. That confession is duly attested, and from its peculiarity, it bears internal evidence of its truthfulness. I concur in the conviction therefore, but the wording should be simply in the words of the charge. The prisoner herself did nothing to the deceased, and forcing a piece of stick into the womb cannot, with propriety, be called “administering medicine.”

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT AND RAMANATH ROY

versus

CHUNDER HAREE CHIOWKEEDAB (No. 3,) KISTO GHOSE (No. 5 APPELLANT,) KHOKARAM BOITEE (No. 6 APPELLANT,) HARADHUN MALOE (No. 7 APPELLANT,) AND BHUGWAN GHOSE (No. 8.)

CRIME CHARGED.—1st count, dacoity attended with wounding in the house of the prosecutor Ramanath Roy, and plundering therefrom property to the value of Company's rupees 93-4, and 2nd count, knowingly having had in their possession a part of the plundered property.

CRIME ESTABLISHED.—Prisoners Nos. 3, 5, 6 and 7, dacoity attended with wounding; prisoner No. 8, accomplice in the dacoity, and knowingly receiving plundered property acquired in the said dacoity.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 14th September 1853.

1853.

December 22.

Case of
MUSST.
JHOGOREE.

NUDDEA.

1853.

December 22.

Case of
KISTO
GHOSE and
others.

Conviction
and sentence
passed by the
sessions judge
on a charge of
dacoity with
wounding up-
held in ap-
peal.

1853.

December 22.

Case of
KISTO
GHOSE and
others.

Remarks by the sessions judge.—The prosecutor and one of his witnesses showed marks of wounds received, as they swore, during the dacoity.

The dacoity took place on the confines of this district, and the prisoner Chunder Haree, who was one of the chief actors, was a chowkeedar of a village in the neighbouring district of Moorshedabad. He was sworn to by the prosecutor and named by the witnesses, as taking a leading part in the robbery and being the individual by whom the prosecutor and Doobai Sheikh were wounded. On his being arrested, he gave information, which eventually proved quite correct, and it led to the seizure of the rest of the prisoners, the four last of whom confessed in the mofussil, and Nos. 5, 7 and 8, also before the magistrate, implicating each other and naming Chunder Haree (No. 3,) as being of the gang. A portion of the plundered property was found with Bhugwan Ghose, (prisoner No. 8,) but the greater part of what has been recovered, was produced by the wife of Lokenath Roy, who was sent in as a prisoner, but admitted by the magistrate as evidence against the rest. His evidence was necessary to identify the prisoners, for they being strangers to the prosecutor and his witnesses, they could not swear to them. The prisoners, notwithstanding the confessions they made having been proved to have been quite voluntary, and they having otherwise been proved to have been concerned in the dacoity, pleaded *not guilty* and called several witnesses to their being men of good character, and that they were either at their homes, or elsewhere, on the night that they were charged with being engaged in this dacoity. Their defence was however a failure, for some of the witnesses declared they know nothing, and the rest were not examined at the request of the prisoners. The confessions of No. 8 merely proved that a portion of the plundered property was found with him, and he admits having received it with guilty knowledge. There was one more prisoner committed, who has been acquitted and will be found in statement No. 8.

Sentence passed by the lower court.—Prisoner No. 3, seven (7) years' imprisonment, and two (2) years' more in lieu of corporal punishment, being in aggregate nine (9) years, with labor and irons; prisoners Nos. 5, 6, 7 and 8, seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The conviction would be good, only upon the attested confessions of all the prisoners, save No. 6, Khokaram; but these are fully confirmed by the evidence of Lokenath Roy, one of the dacoits admitted to give evidence. If the sessions judge, in stating that the four last prisoners Nos. 5, 6, 7 and

8, confessed in the mofussil, meant that they all confessed to having taken a part in the dacoity, he is in error; for Khokaram merely said, that he had gone a little way with the gang, when he was driven away as unfit for the work in hand. This admission, however, coupled with the direct evidence of Lokenath Roy, who swears that the prisoner was present and got part of the plundered property, and with the fact that he was named by the whole of the confessing prisoners, is sufficient to sustain the conviction. The sentence is accordingly confirmed.

PRESENT:
A. J. M. MILLS, Esq., Judge.

GOVERNMENT

versus

ISHURCHUNDER BANDOPADIYA.

24-PERGUNNAHS.

1853.

December 22.
Case of
ISHURCHUNDER BANDOPADIYA.

Prisoner convicted of the embezzlement of salt under his custody as golal darogah, sentenced to 4 years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, embezzlement, inasmuch as the said Ishurchunder Bandopadhyia being employed as darogah of the Munohurgunge salt golahs, in the service of the East India Company, did, by virtue of his said employment, and whilst he was so employed as aforesaid, receive and take into his possession certain salt to the amount of 916 maunds 25 seers and 8 chittacks, to hold for and in the name and on the account of the said East India Company, and did fraudulently convert the same to his own use and benefit, and 2nd count, theft of 916 maunds 25 seers and 8 chittacks of salt, the property of the East India Company.

CRIME ESTABLISHED.—Embezzlement, inasmuch as the prisoner being employed as darogah of the Munohurgunge salt golahs, in the service of the East India Company, did, by virtue of his said employment, and whilst he was so employed as aforesaid, receive and take into his possession certain salt to the amount of 916 maunds 25 seers and 8 chittacks, to hold for and in the name and on the account of the said East India Company, and did fraudulently convert the same to his own use and benefit.

Committing Officer—Mr. E. A. Samuels, magistrate of 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 30th September 1853.

Remarks by the officiating additional sessions judge.—Early in the year 1841, the then existing Board of Customs, Salt and Opium, deputed two of their uncovenanted officers, Messrs. Crank and Muston, to examine into the state of the salt golahs

1853.

December 22.

Case of
ISHURCHUN-
DER BANDO-
PADHYA.

at Munohurgungo, and to test, by actual weighment, the correctness of the returns furnished by the prisoner, who was the darogah of that chokey and suspected of mal-practices. On the arrival of those gentlemen, the salt officers were not forthcoming, but they made their appearance in a day or two, and after some delay, gave in a statement of the salt originally imported, the quantity exported, and the quantity then in store. The weighments then commenced, and for two days the prisoner attended and assisted in the operation. On the night of the second day he absconded, and was only taken in May last, on the offer of a reward of rupees 300 for his apprehension, having successfully eluded pursuit for upwards of 12 years. The weighments were for a time suspended on his flight, but resumed by the orders of the Board in the presence of the agent of the prisoner's sureties. When completed, a deficiency of 916 maunds 25 seers and 8 chittacks was discovered in the store, and the adulteration with mud of 1,110 maunds 13 seers 12 chittacks more, which rendered the salt perfectly unmarketable. The salt officers then present were committed for trial, which was held by me on the 9th December 1841, and acquitted on the ground that they were not responsible agents, and could not be punished, particularly in the absence of their principal, whose guilt had not been established. The evidence against the prisoner are the statements made by Mr. Crank and Shibur-chunder Sircar, a government officer also, who prove the deficiency and adulteration of the salt, and attest records and accounts, which show the status of the golahs at the time the deputation arrived to relieve the prisoner of the charge, and the admission made by him relative to the amount of salt in store and the quantity expended. The prisoner denies the charge, but admits having quitted the golahs without notice to Messrs. Muston and Crank, at the time they were making the weighments, on account of severe indisposition. He affirms that the adulterated salt came in that state from Saugor island, and that he reported the circumstance to the Board, who, however, compelled him to receive and store it. He calls no witnesses to this defence. As the prisoner has been cast in the civil court, in an action for damages brought to recover the loss sustained by the deficiency in the store under his charge, and has suffered in purse, I feel loath to punish him more severely for the embezzlement and breach of trust.

Sentence passed by the lower court.—To be imprisoned without labor and irons for four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner has appealed, merely urging that the adulterated salt was received by him in that state. The prisoner is not charged with the adulteration of the salt, but

that it was adulterated is satisfactorily proved, and this fact evidences the fraudulent nature of the embezzlement charged. The guilt of the prisoner is clearly established, and I reject the appeal and confirm the sentence.

PRESENT :
**SIR R. BARLOW, BART., }
 AND } *Judges.*
A. J. M. MILLS, Esq., }**

1853.
 December 22.
 Case of
 ISHURCHUN-
 DER BANDO-
 PADHYA.

GOVERNMENT
versus
MUSST. JOONEE.

CRIME CHARGED.—Wilfully exposing her new-born infant child, with intent to murder it.

TIPPERAH.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah. Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 28th November 1853.

1853.
 December 22.

Remarks by the sessions judge.—The prisoner was in early life the slave-girl of a vakeel at this station. When manumitted, she married, but her husband dying six or seven years ago, she became a public prostitute. Latterly she appears to have attached herself more especially to one man, by whom she became pregnant. She then left Comillah and went to reside at Juggernath Diggee, a village on the high road to Chittagong, supporting herself by begging. About, probably, 15 or 20 days after her delivery of a seven months' child, she set off on her return to Comillah.

Case of
 MUSST.
 JOONEE.

Early on the morning of the 11th November, some people passing along the road, heard the wailing of a child among some jungle on its east side, and to the north of a tank. They are stated to have been deterred from interfering in its behalf, partly by fear of being involved in any troublesome charge, that might arise from the occurrence, and partly by dread of the wild animals which infest the jungle thereabouts. Information was however given to the witness No. 1, who resides at a village near the spot, and who acted with the promptest humanity. The infant, a miserable little being, of less than a month in age, was found lying on a piece of cloth, tossing its limbs about and crying. The witness raised it immediately, administered some milk, and traced the mother to the house of a *faqueer* close at hand. The prisoner immediately admitted the infant to be hers, and stated that she had placed it where it had been found, under an impression that it was dead, in consequence of exposure to inclement weather. Such also was her defence before the magistrate and myself.

Prisoner
 acquitted of
 the charge of
 wilfully expos-
 ing her new-
 born infant
 with intent to
 murder it.

1853.

December 22.
Case of
MUSST.
JOONEE

The Mahomedan law officer considered the prisoner *guilty* of abandoning her child in the jungle, but acquitted her of doing so with the intention of causing its death. He declared her to have incurred *tazeer*.

I cannot concur in this finding, being of opinion that, under the circumstances of the case, the prisoner must either be acquitted on the ground of having abandoned her child under an impression that it was dead, or convicted of having done so with the purpose of causing its death, and the latter is my impression. The spot where the child was left, although close to the high road, is concealed from it by thick jungles infested by wild animals. It is apparent from the *ghaut* of the tank, but if left (as the child probably was) during the night, or at an early hour of the morning, the chances were a thousand to one against its being discovered by people resorting to the tank to bathe, before it was destroyed by jackals, wild hogs, or leopards. The prisoner's plea, that she supposed the child to be dead from exposure to the rain, and had indeed been told so by people she met on the road, is also in my opinion contradicted by the facts of the case. The child was found crying and struggling, and in the full enjoyment of such vital powers as so puny a being could possess. It is incredible, that if left in an apparently inanimate state, left in fact as a corpse, such exposure should not have completed the destruction of any small remnant of life, instead of reviving the child and restoring articulation and the power of movement. The witness No. 2 deposed to another circumstance, which, if true, goes to show that the prisoner desired to mislead enquiries. He stated that she informed him that her child had been buried at Singer Bazar, which is at a considerable distance from the spot where it was really found. I am bound to add, that the day and night preceding the morning on which the child was found had been very rainy, and that the prisoner is stated to have received the child back with pleasure and kindness. This however was, I fear, but the reaction of maternal instinct, before extinguished by personal want and privation, which perhaps tempted her to get rid of an encumbrance. She is of a very low order of intellect, and supposing my view of the case to be in the Court's judgment sounder than that of the Mahomedan law officer, I would recommend that her sentence should be imprisonment for seven (7) years with labor suited to her sex.

I have directed that every attention should be paid to the infant, who will in all probability live. The prisoner is in the female ward and the other women will watch her conduct to the child and see that she takes care of it.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. A. J. M. Mills.)—*Sir R. Barlow, Bart.*—

I do not think that the prisoner can be convicted of the charge. She is an ignorant creature, as the sessions judge reports, and may have believed the infant, a most weakly one, to be dead. On its recovery, the prisoner received it with pleasure and kindness, as deposed to by the witness Ruttun Gauzee, who picked it up close to the road about 6 feet from it. I would acquit the prisoner.

Mr. A. J. M. Mills.—Giving the prisoner the benefit of the doubt which the record raises, that the prisoner may have abandoned the child under the impression that it was dead, I concur in the acquittal of the prisoner and direct her release.

PRESENT:
SIR R. BARLOW, BART., Judge.

GOVERNMENT

versus

BHAGARUTTEE (No. 1) AND BHIJULLAH (No. 2).
CRIME CHARGED.—Wilful murder of Neermul Sirdar.
Committing Officer—Captain C. Holroyd, magistrate of
Scibsagur, Assam.

Tried before Major Hamilton Vetch, deputy commissioner of Assam, on the 4th November 1853.

Remarks by the deputy commissioner.—It appears that the prisoners belong to a gang of coolies from the South-west Frontier, who are in the employment of the Assam Tea Company, and located at the Hatceputtee factory, on the banks of the Namdung River, and that the deceased was the sirdar over the gang. On the 2nd July, a goat or kid was killed and preparation made for a *khana* or feast, by and in front of the hut of the prisoner No. 2. This place is stated to be distant from the deceased's hut 30 cubits, and about the same from the banks of the Namdung. Besides the friends of the prisoner No. 2, who reside on the spot, there were three guests, Jctooram, Baiahram, and Musst. Bassanie, from neighbouring factories, and the feast commenced in the evening. The deceased does not appear to have gone there until pressed to do so by the prisoner No. 2, and then he went contrary to the warning of his wife, and once before its close had retired to his own house, taking with him some liquor, and there he was joined by the wife or mistress of the prisoner Bhagaruttee, Musst. Nanookie, which coming to his notice, he went there, and finding them drinking together, struck her some blows and also assaulted the deceased.

The feast appears to have come to a conclusion about 11 P. M., when the guests were dismissed, and of those, the strangers,

1853.
December 22.
Case of
MUSST.
JOONKEE.

ASSAM.
—
1853.

December 23.
Case of
BHAGARUT-
TTEE and
another.
Prisoners
charged with
wilful murder,
convicted of
having killed
the deceased
while in a state
of intoxication
and sentenced
to fourteen
years' impris-
onment.

1853.

December 23.

Case of
BHAGARUT-
TEE and
another.

Jetoo and Baiahram, returned to their own homes, but Musst. Bassanie put up for the night at the house of her relation Bandoo. After the party broke up, the deceased (who appears to have been very drunk) was taken to the bank of the river, where he received two fearful wounds, one over the face and the other on the neck, and was afterwards thrown into the river, which was at the time in a state of flood, and next day, about 3 P. M., the body was found in the river a short way below the village *ghat*.

The weapon, exhibited as the one used on the occasion, is a battle-axe of the description in use among the Coles and hill-people of Chota Nagpore.

Next morning, the absence of the deceased from his work, and the non-attendance of the prisoner No. 2, with the other labourers, seems to have excited the suspicion of the assistants at the factory, who, after further enquiry, had the prisoners Nos. 1 and 2 apprehended and sent to the head tea station of Nazirah. The body was afterwards found and sent there.

On the first police examination, both prisoners denied, but on the same day made a full confession and implicated five others of their party, who having been acquitted by the magistrate and jury, have been excluded from this commitment.

The prisoners, No. 1, Bhagaruttee, and No. 2, Bhijullah, plead guilty to charge, and four witnesses, *viz.*, The prisoner No. 1, Sogoia (No. 1,) Myah (No. 2,) Musst. Bassanie (No. 3,) and Jira (No. 4,) deposed to having seen the prisoners, No. 1, Bhagaruttee, and No. 2, Bhijullah, commit the murder, each striking the deceased a blow, one on the face and the other on the neck, with the *koorsa*, or battle-axe produced in court, and to their afterwards throwing the body into the river. The first witness, Musst. Sogoia, describes the first blow to have been inflicted on the deceased's neck by the prisoner No. 1, and the second on his face by the prisoner No. 2. All the others, that the first blow was given by No. 1 on the face, and the second by No. 2 on the neck. The first witness, who is the wife of the deceased, gives the same of the infliction of the wounds in her deposition before the foudary, but in that before the police she does not admit to having seen the murder perpetrated.

The second witness, Myah, who is brother to the prisoner No. 2, states that No. 1 struck the deceased on the cheek, and No. 2, the second on the neck, while in his deposition before the foudary, he says that the blow on the neck was given by No. 1, and that on the face by No. 2 : at the *thannah*, that both blows were struck by No. 1. The third witness, Musst.

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Bassanie's deposition in the foudary court agrees with that given before the jury, as the seat of the blows and by whom inflicted, but before the police she places them in different order. The fourth witness, Jira, that the prisoner No. 1 struck the deceased in the mouth with the axe, and No. 2, with the same weapon, the second blow on the throat ; before the foudary he makes the first blow to have been given by No. 1 on the neck and the second blow by No. 2 on the face ; again, before the police, he says, both wounds were inflicted by the prisoner No. 1. All these witnesses agree in so much that both prisoners were engaged in the murder, and in throwing deceased into the river, except that the first witness* omitted all mention before the police of having seen the murder committed, and said that she was asleep at the time. This witness further deposed, that the prisoner No. 2 had come and persuaded the deceased to attend the feast, and had taken him there against her remonstrances ; that the reasons for the murder were, the deceased having had criminal intercourse with the wife of the prisoner No. 1, Bhagaruttee ; that he (Bhagaruttee) kept deceased's money, while prisoner No. 2, Bhijullah, was indebted to deceased rupees 7. The second witness, Myah, considers the intimacy between the deceased and No. 1's wife, Nanookie, to have been the cause of the murder, as far as concerns No. 1 prisoner, but can give no reason for No. 2 engaging in it, and that he told him not to do so. The third witness further deposes, that the deceased was so drunk, that he was unable to call for help, while the prisoners only a little, so that the witness Myah had told the prisoner No. 2 not to engage in the murder, and that when she had told others what had happened, no one interfered, and at last, when the coolies were called, they showed no alacrity to ascertain the fate of the deceased, nor did they apprehend the prisoners. The witness Jira also adverts to the criminal intimacy between the deceased and Nanookee the wife of prisoner No. 1, and to this prisoner having charge of the deceased's money, from whom the prisoner No. 2 had also borrowed rupees 8, of which rupees 4 had been repaid. All of these four witnesses depose to the prisoner No. 1 having previously assaulted the deceased, in consequence of Nanookie having gone to drink at his house. There are many discrepancies between the different depositions made by these witnesses as to the order of events, and between what was stated in their previous examinations, but such as might have been expected after a drunken party, which lasted from sunset till near midnight, still their evidence is corroborative of the facts and the confessions of the prisoners themselves.

* Mrs. Nanookie, widow of deceased.

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Of these eight witnesses named in the margin, Musst.

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Case of	Nanookie.
BHAGARUT-	" 6, Jeeto.
TEE and	" 7, Biafram.
another.	" 8, Biddessee.
	" 9, Mohes.
	" 10, Mohun.
	" 11, Mangroo.
	" 12, Hurreelal.

Nanookie (No. 5,) the wife or mistress of the prisoner No. 1, Bhagaruttee, deposes that she had gone to the deceased's house on the evening of the feast, and that her husband went there and beat her. She retracts her evidence given in the foudary, to having seen the murder committed, saying that she had been told to say so by Mussts. Bassanie, Myah, and Jira. She denies that the prisoner No. 1 kept deceased's money, or that she even had any criminal intercourse with him, and cannot say whether there was any ill-will between the prisoners and deceased. In her deposition before the foudary court, she adverts to the murder having been pre-concerted by Persaud, Juggernath, Kaleechurn, Mullie Rajpoot, Bundoo No. 1, and another Bundoo, also by Myah, Jeetoo and Jira, and that all were present when the deceased was bound and taken to the river; that their reason for the murder was the false accusation against him and herself, also their dislike to him for his conduct as sirdar over them as *coolies*. (This supports what the prisoners state in their confessions.) The rest

No. 13, Sookoora.
" 14, Bistoo.
" 15, Luckee.
" 16, Dr. Skipton.
" 17, Run Mahomed.
" 18, Bhoga Jemadar.
" 19, Lumboo.

of these witnesses relate the occurrences in connexion with the feast, and the discrepancies between their statements may be attributed to the liquor in which they had all indulged. The witnesses, Sookoora, Bistoo, Luckee, and Dr. Skip-ton depose to the *sooruthal*, while Run Mahomed, Bhoga Jemadar and Lumboo are witnesses to the confession before the foudary Court.

In their confession before the foudary, as well as in that before the police, both prisoners admitted to have committed the murder, and with the weapon produced in court.* They allege as the reason, the ill conduct of the deceased as *coolies*' sirdar over them, and that they, in concert with Kaleechurn, Mullie Rajpoot, Juggernath, Persaud, and Bundoo 2nd, had conspired to take his life, and that the weapon with which it had been effected was borrowed from him (the deceased,) under pretence of killing the goat for the feast, which was got up to enable them to effect their object and to which deceased was invited.

* It appears to have been erroneously written in taking the confessions, a *khampti*, not a *koorsa-dhaw*, the former being a kind of sword.

Gungadbur Surma and Rajnarain	depouse to finding the weapon in the hut of prisoner No. 2, Bhijullah, as also a cloth belonging to the deceased, and a <i>gamcha</i> on which were marks of blood, and which is shown to have belonged to No. 2, while Jeera, Biddessee, Mangroo, and Gungadbur were also witnesses to the apprehension of the prisoners.	1853.
Gungadbur Surma. Rajnarain.		December 23.
Jira. Biddessee. Mangroo. Gungadbur.		Case of BHAGARUT- TEE and another.

In his defence the prisoner No. 1, Bhagaruttee, while he admits he killed the deceased, he alleges he Defence of prisoner was so drunk, that he did not know what No. 1, Bhagaruttee, he was about, that he had no ill-will to the deceased, that there was no criminal intimacy between deceased and his (prisoner's) wife, and that he never kept the deceased's money.

The prisoner No. 2, Bhijullah, pleads that he gave a feast at which much liquor was drunk, and that Defence of prisoner he was so intoxicated that he lost his No. 2, Bhijullah. senses, in which state he remained asleep till noon next day, and he does not know how the murder took place, but confessed to the deed, because the prisoner No. 1 told him that they had together murdered the deceased.

I am of opinion, that the charge of murder is fully established against the prisoners, No. 1, Bhagaruttee, and No. 2, Bhijullah, not only by their own confession, but by the evidence, both direct and circumstantial. I have no doubt both the prisoners were considerably excited by liquor at the time they perpetrated the deed, but at the same time I think the evidence shows that they were in such a state of intoxication as not to be aware of the crime they were committing. This seems also apparent from the circumstance of their taking their victim to the edge of the river, which it appears was much swollen at the time, and into which the body was thrown, thereby affording a strong presumption that they had sense enough to take precautionary measures to conceal the deed, neither do the confessions made before the police, or before the sub-assistant to the commissioner, indicate any want of recollection of the particular parts they acted in the murder. They there admit that the deed was pre-determined, and that the feast was given in order to effect it, and the weapon borrowed from the deceased under the pretence of requiring it to kill the goat. No. 2 prisoner further adds, that the deceased was plied with more liquor than the other guests to make him drunk, and the conduct of the others, who reside

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on the spot, and who were present at the feast, in not at once apprehending the prisoners, or at least reporting to the European assistant at the tea factory, gives a strong color to the accusations contained in the confessions, that the five prisoners who have been acquitted by the jury and magistrate, if they did not counsel, wished to conceal the deed. It is true both prisoners in their defence retract their accusation against the others, and plead that they themselves, so overcome with the effects of liquor, as to be unconscious of their doings, while prisoner No. 1, Bhagaruttee, denies that his wife and the deceased had any criminal connection, and that he was not the keeper of the deceased's money, but these pleas are in opposition to the evidence, and he thus rejects the one in which there might have been ground for mitigation of sentence, i. e. the criminal intercourse between his wife and the deceased. The prisoner No. 2, Bhijullah, besides the plea of intoxication, has brought forward nothing to extenuate the share he took in this unprovoked and foul murder, of which I find both prisoners guilty, and under all the circumstances of the case, see no sufficient reason why they should not suffer capital punishment, and which I accordingly recommend. At the same time I beg the Court's consideration of the more lenient punishment proposed by the magistrate,* and his reasons for his recommendation.

* From Captain C. Holroyd, magistrate of Seesagur, to the Deputy Commissioner of Assam, No. 2, dated 6th August 1853.

SIR,—I transmit herewith the proceedings in the trial noted in the margin, held by me, with the assistance of a jury, on the 1st, 2nd, 3rd, 4th, 5th and 6th of August 1853.

The prisoners both pleaded *guilty*. The circumstances of this case are as follows: —

On the evening of the 2nd of July, there was a feast or dinner held at the No. 2 prisoner's house, at which the deceased attended, as also the prisoner No. 1 and the other *coolies* attached to the factory; together with some of their wives. The feast was given in commemoration of the birth of the prisoner No. 2's child, as is customary amongst these people. The assembly broke up about 10 o'clock P. M., when the parties went to their own houses. The deceased, who appears to have

No. of pri- soners.	Names of pri- soners.	Date of ap- prehension.	Date of commit- ment.	Court of Magistrate, Zillah Seesagur.	
				Trial No. 1 of 2nd Sessions of 1853.	Government versus
1	Bhagaruttee, son of Sobharam, age 40 or 45 years.	3rd July 1853.	6th August 1853.		
2	Bhijullah, son of Kanooram, age 24 years.				

been very drunk, as also the prisoners Nos. 1 and 2, remained drinking, and about 12 o'clock at night the murder was perpetrated.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Baft.)—The evidence of the witnesses in this case is of but little value. In the lower courts it is spoken of as being full of discrepancies, arising, it is presumed, from the intoxicated and stupefied state of all the parties at the time of the murder, and must therefore be received with the greatest caution, in fact no reliance can be placed on it.

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These witnesses swear to having seen the murder perpetrated, yet there are many discrepancies in their evidence. No 1 states she saw both the prisoners Nos. 1 and 2

Eye-witnesses.

No. 1, Mussumut Sogoa.

„ 2, Myah.

„ 3, Mussumut Bassanie.

„ 4, Jira.

kill the deceased and push him into the river; she made the same statement before the joint-magistrate, but at her examination before the police, that she was asleep when the murder

took place, and could not say who had committed it; also, before the jury, this witness, on the first day of her examination, said, she went about 12 o'clock at night to the house of the prisoner No. 2, to see why her husband had not returned; that not finding him, or either of the prisoners there, she was looking about for them, when she saw the two prisoners returning from the direction of the river, and asked the prisoner No. 2 where her husband was. At the second day's examination, she clearly states how the murder took place, who struck the blows, and all the particulars: it is difficult to account for such conflicting statements. The statement also, that the prisoner No. 2 had used much persuasion to induce the deceased to attend the feast, has no weight with me, for it is not come out by the evidence of any other witness. There was a "merry making," and the deceased was asked, as well as all others.

The second witness, Myah, speaks to having seen the murder take place, but in his police and *foujdarie* evidence, he states the cause of the murder was the deceased being discovered by the prisoner No. 1 having intercourse with the prisoner's wife, which he does not state before the jury; that the murder took place after all the others had left, and that both prisoners were much excited by drink, more particularly the prisoner No. 2, Bhijullah, and that the deceased was dead drunk. No. 3 witness states she saw the prisoners killing the deceased, but makes the fact of the deceased having been discovered by No. 1 prisoner with his wife, to have taken place during the time all the people were assembled at the feast, and not after, as stated by the former witness. The fourth witness, Jira, says he saw the murder committed; that after all the others had retired, the deceased and No. 1 prisoner's woman were drinking together in deceased's house, that prisoner No. 1 shortly after went to the house and caught the parties in the very act of sexual intercourse, and thus the murder was committed. But all the four witnesses state, that each individual alone saw the murder committed and that no one else was present.

Of these witnesses, Mussumut Nanookie, the wife of the prisoner No. 1,

Circumstantial evidence.

No. 5, Mussumut Nanookie.

„ 6, Jetooram.

„ 7, Biahram.

„ 8, Bidessee.

„ 9, Mothes.

„ 10, Mohun.

„ 11, Mangroo.

„ 12, Hurreelal.

denies there having been any improper intercourse between her and the deceased, acknowledged both before the joint-magistrate and her police examination that she had seen the murder committed, but had done so, as the other witnesses had recommended her to say so. That her husband had struck her and the deceased both at the feast. The rest of the witnesses speak to the feast having been held on that day and their all being present, and all being more or less excited

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The evidence against the prisoners is to be found in their confessions before the police and the sub-assistant, which, if it be taken to be good, convicts the prisoners of a pre-meditated murder, and in their confessions also given before the magistrate and deputy commissioner, by which the extent of their criminality is greatly reduced.

with liquor ; of the prisoner No. 1 having struck the deceased and his woman Nanookie for going to drink together.

No. 13, Sookoor,	{	Recognize the deceased's corpse, speak to the number and nature of the wounds.
" 14, Bistoo,		
" 15, Luckee,		
" 16, Dr. Skipton,		

No. 17, Run Mahomed,	{	Witnesses to the confession of the prisoners. Prove the <i>fursa</i> or axe having been found in prisoner No. 2, Bhijullah's house, as also the deceased's cloth and a <i>guncha</i> belonging to No. 2 prisoner, on all of which there are marks of blood.
" 18, Bhoga Jonadar,		
" 19, Lumboo,		
" 20, Gungadhur Surmah,		
" 21, Rajnaraein,		

No. 4, Jira,	{	Witnesses to the apprehension of the prisoner.
" 8, Bidossee,		
" 11, Mangroo,		
" 20, Gungadhur Surmah,		

The prisoners on being called on for their defence state—the prisoner No. 1, Bhagaruttee, that he killed the deceased he acknowledges, but how or what he did he knows not, for he was very drunk, that he had no ill-will towards the deceased, that there never had been an intimacy between the deceased and his wife, nor had the deceased ever kept any money in his house or in his charge.

The prisoner No. 2, Bhijullah, in his defence, urges, that on the night in question he had a feast at his house, there was much liquor taken, and all were more or less drunk ; that he drank largely, and was quite stupefied by liquor ; that he remained all night in this state, and was in a drunken sleep the next day, at 12 o'clock, when he was arrested in his house ; that he knows not how the murder took place, but he had confessed to the deed, as the other prisoners had told him they had murdered the deceased together, and that they had better confess ; that the stains of the *fursa* and cloth belonging to him are spots of blood from the goat he had killed at that day's feast ; that he was always on good terms with the deceased, and had also borrowed rupees 10 from him for his brother's marriage, rupees 3 of which he had repaid.

The jury in this case return a verdict of *guilty* against both the prisoners, in this verdict I concur, but under the circumstances of this case, the evidence being very conflicting, and it appearing both the prisoners, more particularly the prisoner No. 2, Bhijullah, were in an excited state from drink, I recommend, in the absence of all proof of the act being pre-meditated, that the prisoner be sentenced severely. The prisoner No 1, Bhagaruttee, to imprisonment for life with labor in irons, and the prisoner No. 2, Bhijullah, for a term of fourteen (14) years.

I now beg to offer the following remarks in this case, and the reasons that have induced me to recommend the above sentence. On the evening of the night the murder was perpetrated, the *Bengalee coolies* of the Assam Company's *Hutie Pootie* tea garden, as also some from the adjoining factory of *hacharee Pookoorie*, had assembled at No. 2 prisoner's, to commemorate the birth of the prisoner's child, and at this feast much liquor was drunk, and all the party (women as well as men) appear to have become more or less

The magistrate's proposed minor sentence is founded on the integrity of the confessions made before him, while on the other hand the deputy commissioner relies on the mofussil confessions, rejecting the prisoners' defence before him, and recommends capital sentence to be passed on both prisoners.

It is apparent from the reports of both the above-mentioned officers, that there had been a drunken party, at which the prisoners and others were present, which commenced at sunset and continued till near midnight, and the prisoners, no doubt,

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inebriated : these people are residents of Chotah Nagpore, having been brought up the by Assam Company to work in their gardens. Such orgies are very common among these people, and I account for the many discrepancies in the evidence to the intoxicated and stupefied state in which all the parties were at the time, and this is the only cause I can conceive enabled a murder of this nature to be perpetrated in the immediate vicinity of the coolie lines, without either the whole gang living in those lines being aware of the deed, or conniving at the same. But there is no evidence to show such was the case ; five other men were put on their trial as accomplices, but they were acquitted both by the verdict of the jury and the magistrate ; therefore all the parties then present being in this intoxicated and stupefied state, their evidence regarding what actually took place has to be received with great caution.

There does not appear to me to be any direct evidence to the murder having been perpetrated by the prisoners charged with the same, but there is strong circumstantial evidence, in addition to the confession of the prisoners, sufficient to bring the charge home to them. As for the finding the deceased's cloth in No. 2 prisoner's house, the evidence shows it was left there by the deceased himself when he went out in a drunken state at the time of the assembly breaking up, and the spots of blood, both on his cloth as also No. 2 prisoner's *gumcha* and the *fursa* or hatchet, might very possibly be, as stated by No. 2 prisoner, the blood of the goat that had been killed for that day's feast. There does not at any rate appear to have been any attempt to secrete these, for they were found in the prisoner's house, by the police, three days after the murder. The prisoner Bhaguruttee (No. 1) denying throughout the existence of the intimacy between his wife or woman and the deceased, a fact which appears to have been well known to all, induce me the more to conclude this was the primary cause of the murder, but there is nothing to show the act was pre-meditated. I conceive it to have been the impulse of the moment, induced by the conduct of the deceased and the prisoner's woman during the orgies that took place, and while the prisoner Bhaguruttee was in an excited state from liquor. As for the share the prisoner No. 2, Bhijullah, had in the murder—he is quite a young man, not more than I should say one or two-and-twenty, though his age is put down as 24, he appears from all accounts to have indulged largely at this feast, and to have been much overcome with liquor. All the evidence goes to prove he was in good terms with the deceased, and that there was no cause for ill-will or enmity between them. As for his joining in such a deed, because he happened to owe the deceased the paltry sum of rupees 7, I reject this entirely. I rather believe he was so overcome with liquor, that he lent assistance in the consummation of the act without well knowing what he was doing, and his being found at noon the next day, lying asleep like a pig in his house, tends to carry out this view of the case. This being my impression of the circumstances under which the murder was committed, after having fully weighed the evidence in the case, I have recommended that the mitigated sentence above stated should be passed on the prisoners.

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as is usual amongst the Coles on such occasions, had been drinking to excess.

Taking the confessions made before the magistrate and deputy commissioner as the grounds of the conviction of the prisoners, I do not hold that they can be brought in *guilty* of wilful murder. I would adopt the more lenient view of the case taken by the magistrate, to which the Court's consideration is drawn by the deputy commissioner. At the same time, I see no reason for subjecting the prisoners to different sentences, as proposed by the magistrate. Both are equally culpable, according to the confessions made before the two last-mentioned authorities. Both confessed that they killed the deceased while in a state of intoxication, not knowing what they were about. Their state, however, cannot be allowed to exonerate them from all responsibility, I therefore sentence them both to fourteen (14) years' imprisonment with labor and irons.

PRESENT :
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

KOILAS CHUNG CHOWKEEDAR (No. 6,) SUMBHOO
CHUNDER KUNDOO (No. 7,) AND SHEIKH BIRU
(No. 8.)

HOOGHLY.

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December 24.

Case of
KOILAS
CHUNG
CHOWKEE-
DAR and
others.

Prisoner charged with dacoity attended with murder, acquitted in spite of the dying declaration of the wounded man.

CRIME CHARGED.—1st count, dacoity attended with the murder of Ramruttun Chuckerbutty, and plundering from his house property valued at rupees 68-4; 2nd count, prisoner No. 6 with receiving a part of the above stolen property, knowing it to be such, and 3rd count, prisoner No. 7, privity to the above dacoity before the fact.

Committing Officer—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 25th October 1853.

Remarks by the officiating additional sessions judge.—The prisoners* are charged with dacoity attended with murder and other minor counts of receiving and privity, and plead *not guilty* to the indictment.

On the night of the 3rd September, the owner of the house and his wife were sleeping in the verandah, when they were woken by the noise caused by the entrance into the premises of six or seven men. A torch or two was lighted, and the robbers proceeded to strip the woman of the ornaments she wore,

* Prisoners Nos. 7 and 8 were convicted and sentenced by this court, and respecting No. 6 only the case is referred.

threatening at the same time to kill her if she attempted to make a noise. Alarmed at their violence, she took the jewels off her person and gave them up, and taking advantage of their attention being turned to other matters, made her escape through the back-door and hid herself in some jungle cover close at hand. From thence, in a short time, she distinctly heard her husband cry out several times, " Koilas, don't beat me any more." On the departure of the dacoits, she re-entered the house and found her husband weltering in his blood with a severe wound in the leg, which he told her had been inflicted by the prisoner Koilas. The wounded man was sent in for medical and surgical treatment the following day, and remained a few days in the hospital, but his friends begged to be allowed to take him home, and as his case was quite hopeless, the magistrate accorded his permission. He died the day he reached home, but during his stay in the hospital, made a dying declaration before the assistant magistrate, in which he distinctly named all the persons concerned in the outrage and pointed out by name the prisoner Koilas as the person who wounded him, and the prisoner Sumbhoo Chunder and Biru as having been present during the perpetration of the dacoity.

This dying declaration tallies with the statement made by the wounded man before the darogah, the morning after the dacoity, in which the facts above set forth and recognition of the prisoners are as distinctly and positively alleged. These records are strongly corroborative of the prisoner's guilt.

The witnesses, Kumul Das, Shiboo Agurie and Kamukhia Agurie, whose houses adjoin the premises attacked and plundered, speak to the facts of the occurrence, the appeal by name to the prisoner Koilas by the owner of the house to desist from beating him, the desperately wounded state of the latter after the departure of the dacoits, his clear recognition of all the prisoners during the affair, and his distinct asseveration that the prisoner Koilas was the person who wounded him.

Two persons depose to the finding of two brass plates (*thalis*) in the house of the prisoner Koilas on its being searched, but the evidence is not satisfactory and by no means establishes the fact that they are not the property of the prisoner.

The civil surgeon states that he examined the wounded man, on his admission into the hospital, and found a compound fracture of both bones of the right leg above the ankle. There were two wounds near the fracture, through one of which the bones protruded. A portion of the bones was sawn off, and it was distinctly explained to the man, that his only chance of life was amputation, but he refused to submit to the

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operation. The other wound was much lacerated and must have been caused either by a pointed bamboo or very blunt spear. The patient was old and had an impaired constitution, and the surgeon now doubts whether amputation of the leg would have saved life, as the wounds showed no disposition to heal during his stay in hospital.

The two next witnesses attest the records of the dying declaration of the wounded man, and his identification of the prisoners when again brought before him. The former, as I have already said, was taken before the assistant magistrate, and the latter before that officer and the magistrate also, and bear their respective attestation and signature.

The prisoner Sumbhoo Chunder and Sheikh Biru made admissions both before the police and the magistrate, and these admissions are duly attested and consistent with each other. The prisoner Sumbhoo Chunder's admission amounts to privity before the fact, but denies participation, and that of Biru to actual participation to the extent of having accompanied the gang and been partly present while they committed the outrage. I regard both these admissions as disengenuous and intended to mislead.

The prisoner Koilas Chung denies the charge before this court also, and accuses the deceased with having got up this case against him in collusion with the darogah, in consequence of some dispute regarding the manufacture of mats. He claims the two brass plates found in his house as his own property, one pledged, the other purchased, and calls witnesses to prove an *alibi*.

The prisoner Sumbhoo Chnnder Kundoo pleads that his mofussil confession was extorted and he signed a paper, put into his hands by one of the officers of the magistrate's establishment, from fear of being again subjected to the ill-treatment he had received at the hands of the police. He further states that the deceased has brought this accusation falsely against him, in consequence of a dispute about the price of a *tukhtapush*, and brings a rambling unconnected charge against the darogah of abuse of power, in supporting some connection in a fraudulent attempt to deprive him of his purchased rights. He calls witnesses to prove that he bears a good character and gains an honest livelihood.

The prisoner Sheikh Biru pleads an *alibi* and cites witnesses in proof of a good character; he also asserts that his confessions were obtained by unfair and unlawful means.

I examined 15 witnesses on the part of the prisoners, but their evidence failed to exculpate them in the slightest degree.

The *futwa* of the law officer acquits the prisoners of dacoity with murder, for want of evidence as to the weapon employed

in inflicting the fatal wound, but finds the prisoner Koilas Chung Chowkeedar *guilty* of dacoity attended with culpable homicide, and the prisoners Sumbhoo Chunder Kundoo and Biru Sheikh, of complicity therein and privity thereto, and declares the former liable to discretionary punishment by both *akoobut* and *deyut*, and the two latter by *akoobut* only.

I convict the prisoners of dacoity attended with murder and robbery, and, regarding the prisoner Koilas Chung, as the instigator of the outrage and the inflictor of the fatal wound under circumstances of great atrocity, would propose that he be transported for life. I sentence the prisoners Sumbhoo Chunder Kundoo and Biru Sheikh, as accomplices in the above crime, to fourteen (14) years' imprisonment with labor in irons in banishment, and two (2) years more in lieu of corporal punishment, making in all sixteen (16) years, but suspend the issue of the sentence until the receipt of the Court's reply to this reference.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The law officer finds Koilas Chung Chowkeedar *guilty* of dacoity with culpable homicide. The sessions judge convicts him of dacoity attended with murder, and he recommends that he should be transported for life; the reference has respect to this man only, the other prisoners having been sentenced by the sessions judge himself as accomplices.

In the conviction of Koilas Chung I cannot concur. The only evidence against him is the assertion of the deceased that he recognized him amongst the dacoits; and whether there be, or be not, any truth in the declaration of the prisoner that there was enmity between him and the deceased, I cannot hold this as constituting sufficient evidence upon which to convict and pass sentence of life-long imprisonment.

The prisoner has denied the charge from first to last, the property found in his house is not proved to be part of that carried off by the dacoits, and he lives in the same village, and it is not shown that he made any attempt to elude the search of the police. It is true he is implicated by the other prisoners and by the witnesses examined at the trial, but this is of no weight. The admissions made by the other prisoners are evidently so worded as to induce a belief that they themselves took no part in the dacoity, and to throw suspicion on Koilas Chung as the principal agent; and the assertion of the wife of the deceased, and of several other witnesses that they heard the deceased entreating Koilas by name, not to beat him any more, is altogether unworthy of credit. This was so remarkable a circumstance, and one which bore so strongly against the prisoner, that, if true, it would unquestionably

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CHUNG
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have been mentioned when they were first examined, yet there is not a word of it in their mofussil depositions. In these they merely stated, that the prosecutor told them that he had recognized Koilas. Were the alleged recognition supported by any reasonable collateral proof, I would accept it; but standing as it does, quite alone, it does not satisfy me that the prisoner was really guilty of the crime with which he stands charged. I accordingly acquit him and direct his release.

PRESENT:
H. T. RAIKES, Esq., Judge.

GOVERNMENT AND OTHERS

versus

RADHE SINGH (No. 6,) GOPAL SINGH (No. 5,) KOOLDEEPNARAIN SINGH (No. 7 APPELLANT,) AND BEHAREE SINGH (No. 4.)

PATNA.

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Case of
KOOLDEEPNA
RAIN SINGH
and others.

A zamindar convicted of plundering a wrecked boat, and of receiving the property knowing it to be stolen, acquitted in appeal.

CRIME CHARGED.—1st count, theft of pepper and betel-nuts, valued at rupees 4,000 or thereabouts, the property of Ramjuss and Golab Rai; 2nd count, fraudulently plundering the above-mentioned property, and 3rd count, receiving and having pepper and betel-nuts, valued at rupees 300 or thereabouts, the property of Ramjuss and Golab Rai, knowing the same to have been acquired by theft.

CRIME ESTABLISHED.—1st count, fraudulently plundering property valued at rupees 4,000 or thereabouts, the property of Ramjuss and Golab Rai, and 2nd count, receiving and having pepper and betel-nuts valued at rupees 300 or thereabouts, the property of Ramjuss and Golab Rai, knowing the same to have been acquired by theft.

Committing Officer—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 17th September 1853.

Remarks by the sessions judge.—This is a well-established case of plunder of an insurance boat sunk opposite to the mouth of the River Soano, on a *dearah* called Mungurpaul. The boat was laden with betel-nuts and spices to the value of rupees 4,000 and belonged to a Patna house of trade, whose servant appears as prosecutor, conjointly with the Government. The boat capsized in a gale of wind, and drifting down with the stream, settled at a short distance from the shore in several fathoms water. The crew all struggled ashore, and towards evening, 10 or 12 *dinglees* came off from the southern shore, and in spite of remonstrances and threats from the stranded boatmen, who were powerless to make any physical resistance by reason of the depth of water between the wrecks and the shore, the whole cargo was deliberately hawled

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Case of
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out of the water and carried away. On the following morning, nothing of the freight remained. For some days no trace of the property could be discovered, until the prosecutor accidentally meeting witness No. 1 at Sherpore, a large village several miles east of the River Soane's mouth, circumstances were elicited in conversation with him, which led to suspicion attaching to the principal defendant, Kooldeepnarain, zemindar of large possessions, residing in that neighbourhood. Accordingly, on the following morning (being July 9th,) a boat was watched unmooring from below the bungalow of that person, and on reaching Berapore, a small village four miles west of Sherpore, it was seized by the police and found to contain a quantity of the plundered property, valued altogether at about rupees 300. The defendant No. 4, who is shown to be the servant of Kooldeepnarain and charundar of the boat, was apprehended on board, and the defendants Nos. 5 and 6 (who were at the time following the boat on shore, and who first ran off on seeing the seizure made by the police, but subsequently surrendered themselves,) are also proved to be in the same capacity. The property was fully identified, and the evidence goes to show clearly, that it had all been stowed away in the bungalow of Kooldeepnarain and his uncle Oodithnarain (not apprehended,) for some days previous to its removal on the boat, from which it was captured by the police. This craft had been hired at rupees 10 per diem, the day previously, to carry the betel-nuts and spice to Daoodnuggur (a large town on the banks of the Soane,) for sale, and the boatmen belonging to it, who were first made defendants, but subsequently admitted as evidence, give very convincing depositions in respect to the genuine character of the charges and guilt of the four first-named defendants. Kooldeepnarain (No. 7) at first tried to escape, but was afterwards apprehended whilst crossing the river in a boat to the Chuprah side. Defendant No. 8 was committed as an accessory on the presumption of having aided Kooldeepnarain in escaping from arrest. I convict the prisoners Nos. 4, 5, 6 and 7 on the second and third charges named on the indictment, and release the prisoner No. 8 for want of evidence. The *futwa* of the law officer is in accordance with this judgment. By reason of the audacious character of this outrage, the power and influence of the principal defendant, Kooldeepnarain, the great value of the plundered cargo, and on account of the extreme difficulty of proving robberies of this kind, which it is to be feared are only too common on the Ganges, I sentence prisoner No. 7, as principal defendant, to seven (7) years' imprisonment with labor in irons, and prisoners Nos. 4, 5 and 6, each to five (5) years' imprisonment with labor in irons as his subordinates and associates in the robbery.

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Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—There is no evidence at all to fix any one of the prisoners with the actual plunder of the boat, and with reference to the prisoner Kooldeepnairain, who has appealed, the only question is, whether the witnesses, who depose to his actual presence while the boat (subsequently seized) was being laden with the plundered property, are worthy of credit or not ? On this point, I cannot concur with the sessions judge. They consist of the boatmen of the boat hired by Nos. 4 and 5, and these men, though they admitted that they never before saw this prisoner and that the night was dark, assert that they saw him and knew him from being pointed out to them by his servants—a most unlikely story, considering how great his wish must have been to keep himself concealed, and how unnecessary his presence must have been in loading the boat. The evident anxiety of these witnesses, and of those who pretend they were casual spectators of the scene while attending to a call of nature on the spot, renders their evidence, in my opinion, far too questionable to be relied upon.

The statement of the informer is, in my opinion, least of all entitled to credit ; it is, as it stands, far too improbable to be believed, and I place no faith on it as a truthful account of the manner in which he obtained his information regarding the parties to whom the property was traced.

I acquit the prisoner No. 7.

PRESENT :
 J. DUNBAR, Esq., }
 AND } Judges.
 H. T. RAIKES, Esq., }

GOVERNMENT AND GORACHAND SINGH
versus
NOKORY BAGDEE.

CRIME CHARGED.—Wilful murder of the prosecutor's brother.

Committing Officer—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 24th October 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with the wilful murder of the prosecutor's brother, and pleads *not guilty*.

The prosecutor asserts that the prisoner was in the habit of getting supplies of rice, &c., from his sister, and owed her 4 annas on that account, and that an altercation took place between them on her demanding payment, which issued in the prisoner's assaulting her. Roopchand, the younger brother of the prosecutor, remonstrated with the prisoner and upbraided him for the injustice and unmanliness of his conduct a few days after the event, when a quarrel ensued between them, and the prisoner stabbed him with a knife. He attempted to effect his escape, but was arrested by a chowkeedar a few yards from the spot, with the bloody weapon in his hand. Roopchand died on the spot.

The witness Bishonath Chowkeedar was the individual who arrested the prisoner with the knife, the moment after he had committed the deed. His notice was attracted to the place by the sounds of quarrelling, and as he advanced, he distinctly heard the cry of "*Bapre*." On coming up, the prosecutor told him how the prisoner had stabbed his brother and was making off, and he followed and secured him.

Three other persons speak to the apprehension of the prisoner in the manner above stated with the bloody knife, and the death of Roopchand then and there from the effects of a deep penetrating wound below the left breast. They also heard the sounds of altercation and the cry of "*Bapre*," and saw the prisoner running away.

Two witnesses attest the record of the inquest held on the body by the darogah, and affirm that a stab was discovered on the left side of the deceased a little below the chest.

The civil surgeon states in substance, that he examined the body of the deceased and found a penetrating wound between

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Case of
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The prisoner convicted of
 wilful murder,
 sentenced, in
 the absence of
 proof of pre-
 meditation, to
 transportation
 for life.

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the fourth and fifth rib on the left side of the chest, extending deeply into the lungs. It was $1\frac{1}{4}$ inch in length and $\frac{3}{4}$ inches in depth, and was in his opinion the cause of death. He found three pints of blood in the cavity of the chest, and thinks that death must have ensued very rapidly after the infliction of the wound, as besides the internal effusion spoken of, the clothes of the deceased were saturated with blood. The deceased had no other marks of violence on his person and the other organs of the body were remarkably healthy. Mr. Ross adds, that there was a difference in the direction of the external wound and its continuation in the interior of the chest, which he can now easily understand to have been caused by such a crooked instrument as that produced in court (the weapon used by the prisoner.)

The prisoner denies the charge and declares himself the victim of a general conspiracy. He avers that he has carried on an intrigue with the prosecutor's sister for the last 4 or 5 years, and was returning from her house one night, when he was set on by her relatives and beaten. He adds that knives were used in the *mélée*, and the blow intended for him fell on the deceased and caused his death. He calls witnesses to prove the alleged connection between him and the prosecutor's sister.

Three persons appeared on his behalf, but disclaimed all knowledge of the fact pleaded.

The *futwa* of the law officer acquires the prisoner of wilful murder, for the want of direct evidence, but finds him *guilty* of culpable homicide, and declares him liable to discretionary punishment by *deyut*.

I dissent from the finding and convict the prisoner of wilful murder most wantonly committed. The weapon used, and the force with which the blow must have been inflicted, leave no doubt as to the prisoner's intention, and I see nothing in his case which would warrant a recommendation to mercy. I propose that he suffer death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.)—*Mr. H. T. Raikes.*—Although there is every reason to believe that the altercation between the prisoner and the deceased, which ended in the death of the latter, was accidental, and that up to that time no malice existed between them, yet the deadly weapon used by the prisoner, the part struck, and the wound inflicted, seven inches and a half in depth, evince a determination to take life, which makes the prisoner's crime wilful murder, and he is therefore liable to suffer death. It is however just possible, as the parties were struggling together at the time, that fatal force was inadvertently lent to the blow, and if the second judge, to whom this case goes, sees in this anything

to extenuate the prisoner's guilt, and afford ground for mitigation of punishment, I would sentence him to imprisonment for life in transportation beyond sea.

Mr. J. Dunbar.—The prisoner has no doubt incurred the penalty of death, but there is no reason to suppose that he took the knife with him for any deadly purpose, or in fact that he was in any degree actuated by feelings of enmity or malice. The blow was struck in the heat of a quarrel quite unpremeditated. I concur therefore with Mr. Raikes in viewing the case as one in which mitigation of punishment may be allowed, and would sentence the prisoner as proposed by him.

PRESENT:
H. T. RAIKES, Esq., Judge.

GOVERNMENT AND SYUD MOBARUK ALEE AND OTHERS

versus

BOODHOO MOOCHEE (No. 4.) GUNESH DUTT (No. 5 APPELLANT,) GOPAL DOSS (No. 8 APPELLANT,) DOORGAPERSAUD (No. 9 APPELLANT,) LALJEE SAHOO (No. 13,) BALA KULWAR (No. 16,) DUMREELAL (No. 17,) AND SHITABLAL (No. 18.)

CRIME CHARGED.—Prisoners Nos. 4, 5, 8 and 9, riot and tumultuous assemblage. Prisoner No. 13, 1st count, causing, by his advice and assistance, the above riot, in which several persons were wounded, and the property of several persons was plundered, and a government phandee house, *musjeed* and an *emambara* were broken, and 2nd count, privity to the above riot. Prisoners Nos. 16 to 18, 1st count, riot and tumultuous assemblage, and 2nd count, resisting the police officers and assaulting the jemadar of phandee Surbrown bazar.

CRIME ESTABLISHED.—Prisoners Nos. 4, 5, 8 and 9, riot and tumultuous assemblage. Prisoner No. 13, causing, by his advice and assistance, the above riot, in which several persons were wounded, and the property of several persons was plundered, and a government phandee house, *musjeed*, and an *emambara* were broken. Prisoners Nos. 16 to 18, riot and tumultuous assemblage, and resisting the police officers and assaulting the jemadar of phandee Surbrown bazar.

Committing Officer—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 2nd August 1853.

Remarks by the sessions judge.—The prisoners plead *not guilty.*

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Case of
NOKORY
BAGDREE.

BHAUGUL.
PORE.

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Case of
GUNESH
DUTT and
others.

The prisoners were convicted of riot and tumultuous assemblage, arising out of a dispute regarding religious processions, between the Hindoos and Mussulmans at Monghyr.

In appeal the sentences passed by the sessions judge were upheld, except as regards the order of fine under Act XVI. of 1850, which was reversed.

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Case of
GUNESH
DUTT and
others.

This case is one of a disturbance in the town of Monghyr, between the Hindoos and Mussulmans, which took place in November 1852.

The Hindoos, persisting in carrying in procession, with an image of their goddess, *doorgah*, the green flags, more properly belonging to the Mahomedan ceremonial of the *mohurrum*, were forbidden by the darogah, and their procession, which had already been paraded through the streets of Monghyr, was stayed at the thannah by the darogah in person. This was on Friday, the 12th November 1852. The procession being thus stayed, and the image of *doorgah*, set down, the Hindoos collected in great numbers and were clamorous to be allowed to continue their route to the river, carrying the green flags objected to by the darogah. At this time, towards evening of the 12th, Mr Farquharson, the collector of Monghyr, happened to pass by in his buggy and was appealed to by the crowd, to give orders that the procession might be allowed to proceed with flags as customary. Mr. Farquharson told them he could give no order on the subject, but advised their dispersing and referring the matter to the magistrate. This they at once did, seemingly in perfect good humour.

The next morning early, the magistrate came to the spot and ordered the darogah to summon Boodhoo Moochhee, (prisoner No. 4,) the owner of the image of *doorgah*, to remove it. Boodhoo was summoned and apparently consented, but instigated by others, did not bring the bearers requisite to carry out the order. The magistrate came again to the spot at about 10 A. M., and ordered the darogah, should bearers not be brought, to remove the *doorgah* with his chowkeedars. The magistrate, who was residing about 2 miles from the town, having given this order, returned home.

Towards noon of the same day, large crowds began to assemble about the glacis and open ground south of the entrance to the town, while a body of Mussulmans were gathered on the glacis north of the same, the image of *doorgah*, as stayed by the darogah on the previous day, being between the two parties, under a guard of a body of the town chowkeedars, deputed for its protection by the darogah. About 2 in the afternoon, the Hindoos made a rush towards the image, and while one party of them carried it off, another party came to blows with the group of Mussulmans before mentioned ; some missiles were flung seemingly by the latter, but their rout was soon general ; the Hindoos then broke into and completely gutted the pharee and police station-house, chased the Mahomedans wherever they could find them, and in some instances maltreated them when caught. One man, Irshad Allee, jemadar, was severely beaten and wounded, and several

others knocked down and injured ; a Mahomedan mosque was also broken into and defaced, but not otherwise polluted. The daroga, who was on the spot when the attack was made, was the first to fly ; he took refuge in a house in one of the narrow streets of the town, which he did not leave again till fetched away by the collector, after the dispersion of the crowd and the cessation of the riots. On the first outbreak, he had sent word to the magistrate by the thannah mohurir, who having to go on foot, a distance of 2 miles, the message was not speedily delivered. Immediately on receiving it, the magistrate came to the spot, and with him Mr. Farquharson, the collector ; by this time the crowd had entirely dispersed, and the streets were quite deserted.

The case was tried with a jury, consisting of Mr. Moore, a most respectable and intelligent East Indian merchant, Pundit Ramnarain Roy, deputy collector, and Waheedoodeen, sunder ameen of Monghyr.

Boodhoo Moochee, (prisoner No. 4,) Gopal Doss (No 8,) and Doorgapersaud (No. 9,) were charged with riot and tumultuous assemblage. No. 4, the owner of the image, the procession of which led to this disturbance, was proved to have been with the procession throughout, and also among the rioters, when the *doorgah* was carried off, and the pharee and Mussulmans were attacked as above described.

No. 8 is brother of the principal abkar, and is proved both to have been among the rioters during the disturbance and to have distributed liquor gratis to the mob, with a view to incite them to resist the police.

No. 9 was nazir of the magistrate's court, and is proved to have been among the rioters during the disturbance, urging them on to assault the Mahomedans.

The charge is fully proved against them ; their defences were separately given in writing, but I found nothing in them, or in the evidence adduced in their support, to shake my confidence in that for the prosecution. The jury found them guilty of riot and tumultuous assemblage, in which I concurred, and sentenced them as per column 12 of this statement.

Gunesh Dutt (prisoner No. 5) was committed on a like charge ; he is one of the principal persons in Monghyr, a large zemindar of considerable influence. He was fully proved to have been with the crowd, instigating them to deeds of violence. His written defence is recorded ; it endeavors to establish an *alibi*, but with the witnesses brought in its support, is utterly unworthy of credit. Even, if he were, as he says, absent at the actual time of the riot, there is no doubt that he was originally with the mob, taking a lead in their

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proceedings, and is therefore equally subject to punishment with those more prominently engaged. The jury find him *guilty* of the charge brought against him, in which I concur, and sentence him as noted in column 12 of this statement.

Laljee (prisoner No. 13) is charged with causing the riot by his advice and assistance, &c. &c. (*vide* column 10 of this statement.) The charge is fully proved against him. His written defence is recorded; it asserts that he was in his own house at the time. The witnesses for the prosecution swear to his being seen coming from the fort and giving encouragement to the rioters. Several witnesses were produced to this effect, but the assertion falls to the ground before the much more trustworthy evidence of the prosecution. The jury find him *guilty* of the charge preferred against him, in which finding I concur, and sentence him, as noted in the 12th column of this statement; the very great and universally acknowledged respectability, and general good conduct of the prisoner, inducing me to spare him the pollution of confinement in the common jail, to which his crime had doubtless subjected him.

Bala (prisoner No. 16,) Dumree (No. 17,) and Shitab (No. 18,) were charged with riot and resistance of the police and assault on the jemadar, Irshad Alee.

The charge was fully proved against them, their defence entirely failing to shake the testimony of the witnesses for the prosecution. The jury find them *guilty* of the charge made against them, in which I concur, and sentence them as per column 12 of this statement.

The punishments I have awarded in this case may appear light, but taking into consideration the oppressive conduct and subsequent apathy and negligence of Moobaruk Alee, darogah, as instanced in the copy of the report sent to the superintendent of police, together with the long time the case has been kept hanging over the accused, I feel confident that it is sufficient for all the ends of justice and example. The evidence I have had to deal with was tinged throughout with a strong party-spirit, showing a malevolent and vindictive feeling on part of the Mahomedans towards the Hindoos, which I should have been loath to gratify by heavier sentences.

With regard to the magistrate's conduct in this case, there are several points to be considered and allowances to be made. First of all, the magistrate was never fully informed of what was well known to the darogah and probably many others. Mr. Balfour had only taken charge from Mr. Hope on the 11th, had heard nothing of a former desecration of Boodhoo's image of *doorgah* on the 21st October, was temporarily residing at a distance from the town, and did give

orders that were in fact sufficient to have prevented the disturbance had they been actively carried out by the darogah. There is no denying but that the magistrate should have seen these orders carried out himself, when twice on the spot on the morning of the 13th; that he did not do so however is evidence that he was never for a moment suspicious of what was impending. The whole matter, the important part of it at least, had, it appears to me, been carefully kept from both Mr. Hope and Mr. Balfour. I am confident that neither of these gentlemen knew of the extent of ill-feeling that prevailed in the town, nor of the darogah's fixed determination that the Hindoo procession should not be paraded with Mahomedan flags: nothing in fact would have been easier than for Mr. Balfour to have removed the flags and taken them away with him on his return home, but it evidently never struck him that such a course was necessary. The riot in fact threw so little shadow before it, that not one of the European community was aware of its character, till it had actually commenced; and so small was its force, that the gentlemen from the fort, Messrs. Dwyer and Inman, (witnesses Nos. 259 and 260,) did not hesitate to drive into the midst of the crowd during its height, when they were received with every mark of respect and submission, the only threat even they heard being against the darogah.

Before concluding, I must say a few words on behalf of a very worthy man, whose name has been mixed up in this case. I allude to Pundit Rammnarain Roy, deputy collector of Monghyr, against whom, among others, a petition was sent to the superintendent of police, the consequence of which was an order by the superintendent of police, dated the 9th February 1853, enjoining the removal to another thannah of Muhunder Narain, then acting darogah of Monghyr, because he was a relative of Rammnarain. I don't mean for a moment to impugn the propriety of this order, but with regard to Rammnarain's implication in the riot, beg to say, that after a careful consideration of the evidence before the magistrate, so convinced was I of his innocence, that he was requested by me to sit on the jury, and sat accordingly.

Sentence passed by the lower court.—Prisoners Nos. 4, 8 and 9, to pay a fine of rupees 100 each, and to be imprisoned in the Monghyr jail for six (6) months with labor, commutable by a fine of rupees 100, payable within one month from date of sentence. Should the first fine not be paid, to a further term of six (6) months on like conditions, and under Act XVI. of 1850, to pay jointly and severally, with prisoners Nos. 5 and 13, a fine of rupees 200 to Hukeom Wulleeoollah and rupees 100 to Bhuttoo, prosecutors—in all rupees 300.

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Prisoner No. 5, to pay a fine of rupees 300 and to be imprisoned for six (6) months in the Monghyr jail with labor, commutable to a further fine of rupees 200, payable within one month from the date of sentence. Should the first fine be not paid, to be imprisoned for a further period of six (6) months on like conditions, and to pay jointly and severally with prisoners Nos. 4, 8, 9 and 13, a fine of rupees 200 to Hakeem Wulleeoollah and rupees 100 to Bhuttoo—in all rupees 300.

Prisoner No. 13, sentenced to pay a fine of rupees 1,000, in default of payment to one (1) year's imprisonment with labor, commutable by a further fine of rupees 500, payable within one month from this date, *i. e.* on or before the 1st September 1853, and under Act XVI. of 1850, to pay jointly and severally with prisoners Nos. 4, 5, 8 and 9, a fine of rupees 200 to Hukeem Wulleeoollah and rupees 100 to Bhuttoo—in all Company's rupees 300.

Prisoners Nos. 16, 17 and 18, each to six (6) months' imprisonment with labor, commutable by a fine of rupees 50, payable within one month from the date of sentence.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.)—This case has been twice postponed, to allow the counsel retained by the prisoner Doorgapersaud to prepare his case, and has now been heard without any argument on his part, in consequence of his informing the Court that he had received no instructions from his client and is unable to plead any thing in defence.

The Court has gone over the evidence on record, and observes there is abundant evidence against all the appealing prisoners, which has been credited by the sessions judge who examined the witnesses ; and it exhibits no such inconsistencies or improbabilities as to shake this Court's confidence in its truth.

This evidence proves that the prisoners appealing were encouraging the rioters by their presence amongst them and the use of their names, but there is nothing to lead to the belief that they were themselves in any way connected with the plunder and outrage which is said to have followed. This appears to have been the act of the lower orders of the people in the licence and excitement of the moment, and the sessions judge has not connected these prisoners therewith in the conviction recorded against them, he should not therefore have sentenced them under Act XVI. of 1850, and I therefore remit that part of the sentence passed on them, but confirm the rest of it.

PRESENT :
A. DICK, Esq., Judge.

SHEIKH HUMEED ALEE

versus

SONOOA DOME (No. 2,) HEERA DOME (No. 3,) AND
DULLOO DOSAD (No. 4.)

CRIME CHARGED.—1st count, theft of property in cash and other articles belonging to the prosecutor's master, amounting to rupees 595-13-3 ; 2nd count, accomplices in the said theft; 3rd count, accessories before and after the fact of the said theft, and 4th count, privity to the said theft.

CRIME ESTABLISHED.—Privity to the theft of property in cash and other properties belonging to Lieutenant Russell, master of the prosecutor, amounting to rupees 595-13-3.

Committing Officer—Mr. G. C. Chapman, deputy magistrate of Deoghur, Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 19th July 1853.

Remarks by the sessions judge.—Lieutenant Russell was encamped near the village of Doolanpore, for ten days or a fortnight; on the night of the 5th of March, his tent was robbed of property valued at rupees 595-13-3, of which rupees 386-4 was cash.

Prisoners Sonooa, Heera and Dulloo were the chowkeedars on guard at his encampment. Bhatoo is a sweeper in Lieutenant Russell's service. The recovered stolen property, rupees 260 cash and a sword, was discovered by accident by witness No. 3, who had accompanied the thannah jemadar on his visit of investigation; they were near a tank, about a *russée* from the tent; the other property, a sword, a brass-bound tin box, &c., was discovered in the jungle, some 7 *russesées* from the encampment. Lieutenant Russell (witness No. 4) was to have marched on the next morning; all his servants, but a khansama and a sirdar bearer, had gone on a head. Mittooah (prisoner No. 1) is a notorious bad character, residing near the spot, and is said to have confessed in the mofussil to being the sole perpetrator of the theft, the chowkeedars being cognizant of it. Sonooa (prisoner No. 2) confessed both in the mofussil and foudjary that he took part in the theft, Bhatoo (prisoner No. 5) abstracting the property from the tent, and Heera (No. 3) and Dulloo (No. 4) assisting in conveying it away.

The prisoners here repudiate all former confessions and deny having been concerned in the theft; Bhatoo states that he had gone on with the other servants, which is partially corroborated by the prosecutor.

BHAUGUL-
PORE.
1853.

December 24.

Case of
SONOOA DOME
and others.

Two prison-
ers convicted
by the sessions
judge of privity
to theft, acquit-
ted in appeal.

1853. The witnesses for the defence prove nothing in favor of prisoners.

December 24.

Case of
SONOOA DOME
and others.

The jury acquit Mittooah and Bhatoo, finding prisoners Sonooa, Heera and Dulloo *guilty* on the 4th count of the charge, in all of which I concur.

The only direct evidence against the prisoners is the confession of Sonooa (prisoner No. 2.) The confession of Mittooah was denied in the *foujdayr*, and is altogether opposed to that of Sonooa, which was consistent both in the *mofussil* and before the magistrate, and has been duly attested before this court by witnesses Nos. 9 and 10. I reject therefore the confession of Mittooah, who has against him only his notorious bad character, which evidently led to his apprehension. Several witnesses depose to his evil ways, and he was once imprisoned in the Monghyr jail for three (3) years for cattle-stealing. None of the counts of the present charge are proved against him, and he is therefore acquitted, the magistrate being ordered to take security for his future good behaviour.

Bhatoo also is acquitted, there being no evidence of his being in any way connected with the crime.

Sonooa (No. 2) is convicted on his own confession of being cognizant of the theft; and it being impossible, that his fellow-chowkeedars (prisoners Nos. 3 and 4,) could have been ignorant of the fact, I convict them all on the 4th count, of privity to the theft, and sentence them, Sonooa, Heera and Dulloo, being chowkeedars, to seven (7) years' imprisonment with labor in irons, and under Act XVI. of 1850, to pay jointly and severally a fine of rupees 126-4, being the amount of the stolen cash unrecovered. I see nothing to blame in the magistrate having committed Mittooah and Bhatoo, there were many suspicious circumstances against them.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.)—The evidence against the prisoners Heera and Dulloo is solely, according to the abstract of the sessions judge and the record, that, *first*, they were chowkeedars, jointly with Sonooa; *secondly*, implicated in the confessions of Sonooa—the *first* is not sufficient proof and the *second* is no legal evidence against them. The Court therefore acquit both, and order their release. The Court see no reason to interfere with the sentence passed against Sonooa, who confessed to privity both before the magistrate and in the *mofussil*.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT AND MR. J. P. HAMPTON
versus
HAJEE SHEIKH.

CRIME CHARGED.—1st count, with having, with others, on the 26th September 1852, illegally and riotously assembled and attacked the premises of the prosecutor, Mr. J. P. Hampton, and plundered the house of one Ajaib Singh, the jemadar of the said prosecutor, Mr. J. P. Hampton, and 2nd count, with having, with others, illegally and riotously assembled, and a second time attacked the premises of the prosecutor, Mr. J. P. Hampton, and with having, during the said attack, wounded Mounshad Sheikh, a thannah burkundauz.

CRIME ESTABLISHED.—Having illegally and riotously assembled and a second time attacked the premises of the prosecutor, Mr. J. P. Hampton, and with having, during the said attack, wounded Mounshad Sheikh, a thannah burkundauz.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 25th July 1853.

Remarks by the sessions judge.—The full particulars of this case are detailed in the jail delivery statement No. 6, for the month of January 1853.

Three eye-witnesses deposed to having seen the prisoner, with others, illegally assembled, attacking a second time the premises of the prosecutor, Mr. J. P. Hampton, and wounding Mounshad Sheikh, a thannah burkundauz. Another witness deposed to having recognized the prisoner when he attacked the prosecutor's premises.

The witnesses to the defence of the prisoner stated that they saw him at a village called Bettye, which is 6 miles from the scene of the riot, some days previous to the occurrence of the offence, and that he was in the employ of Ram Baboo on the day the riot took place. These statements do not defend the prisoner at all, but on the contrary they tend to prove that he was near at hand, and as a servant of Ram Baboo, he was likely to have participated in the crime. Soon after the occurrence of the crime, the prisoner evaded arrest, but was apprehended in a case of dacoity in the district of Nuddea, where he was committed to the sessions, but acquitted, and did not make any special defence. It was clearly proved, that he was in the employ of Ram Baboo, and that at the time of the riot, he, with others, illegally assembled and attacked the premises of the prosecutor, Mr. J. P. Hampton, and

MOORSHEDA-	BAD.
	1853.
December 26.	
Case of	
HAJEE	
SHEIKH.	
Prisoner	
convicted of	
illegal and	
riotous assem-	
blage with	
wounding, sen-	
tenced to seven	
years' impris-	
onment. Ap-	
peal rejected.	

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1853.

December 26.

Case of
HAJEE
SHEIKH.

wounded Mounshad Sheikh, a thannah burkundauz, with a spear, on his attempting to oppose the rioters. Mounshad Sheikh appeared before the sessions court and recognized the prisoner as the rioter who had wounded him in the attack.

The assessors who sat on the trial considered the prisoner guilty of the 2nd charge specified in the calendar. The sessions judge concurred in the verdict, and with reference to the active share which the prisoner took in the assault, his wounding Mounshad Burkundauz, and then evading justice, and being apprehended in a case of dacoity in another district, sentenced him as stated in the proper column.

Sentence passed by the lower court.—Seven (7) year's imprisonment with hard labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The deposition of Mounshad Burkundauz was taken on oath by the darogah, immediately on his being brought into the factory wounded; he then distinctly deposed that he had been wounded by the prisoner, and he has ever since adhered to this statement, which is fully borne out by the evidence of several other witnesses, some of whom swear to the prisoner's having been present in the attack, and others to his being the very man at whose hands Mounshad received his wound. His identity was positively sworn to at the trial. The attack was one of great and wanton daring.

The sentence is confirmed.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT, GREEDHUR AHEER, DOMA AHEER,
AND BUKTOUR KUMKUR

versus

RAMTOHUL RAI (No. 1.) RESAL RAI (No. 2.) RAM-
PUGAS SINGH (No. 3.) ABLAC RAI (No. 4.) RAM
SUM RAI (No. 5.) AND RUGOBUR RAI (No. 6.)

CRIME CHARGED.—1st count, affray attended with culpable homicide of Pamah Bind (deceased), and 2nd count, assault with wounding.

CRIME ESTABLISHED.—Affray attended with culpable homicide.

Committing Officer—Mr. J. F. Lynch, deputy magistrate of Sewan, with powers of a magistrate.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 3rd October 1853.

Remarks by the sessions judge.—This is a case of affray attended with culpable homicide, arising out of a cattle trespass. It appears that four head of cattle, belonging to some of the prisoners, had got into a sugar-cane field of the prosecutor Greedharee, who was driving them off to the thannah, when the parties in charge called out and the prisoners and some others (not taken) came and attacked them with *lattees*, and wounding some of them, so much injured a man named Pamab, that he subsequently died from the effects of the wound. All the prisoners deny the charge, and four of them plead *alibis*, and though they call several witnesses in support of their respective statements, the case is clear against the whole of them, and as the jury also convict them all, I have, in concurrence with their verdict, convicted and sentenced them as noted above, giving the prisoner Ramtohul a more severe punishment than the rest, as he is shown to have been the person at whose hands Pamab received his wound.

Sentence passed by the lower court.—No. 1 to be imprisoned without irons for a period of four (4) years from 3rd October 1853, and to pay a fine of rupees 40 on or before the 2nd November next, in failure of payment to labor until the fine be paid or the term of his sentence expire. Nos. 2, 3, 4, 5 and 6, each to be imprisoned without irons for a period of three (3) years, from 3rd October 1853, and each to pay a fine of rupees 30 on or before the 2nd November next, in failure of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I cannot find, from any thing on the record, that there

SARUN.

1853.

December 26.

Case of
RAMTOHUL
RAI and
others.

The prisoners were convicted by the sessions judge of affray with homicide, but in appeal the conviction was altered to riotous attack with culpable homicide.

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1853.

December 26.

Case of
RAMTOHUL
RAI and
others.

were two armed parties, opposed to each other, in this case. The violence would appear to have been all on the side of the prisoners and their party, directed against those who were driving off the trespassing cattle. The commitment should, therefore, have been for riotous attack, with culpable homicide, and such I think is the proper conviction on the evidence.

The sentence is confirmed.

PRESENT:

SIR R. BARLOW, BART., }
AND } Judges.
A. J. M. MILLS, Esq.,

GOVERNMENT AND CHUKOUREE BELDAR
versus

GREEDHAREE (No. 1) AND KEWAL (No. 2)

CRIME CHARGED.—Culpable homicide of Doma Beldar.

Committing Officer—Mr. A. G. Wilson, deputy magistrate of Nowadah.

December 29.

1853.

Case of
GREEDHAREE

and another.

Conviction
and sentence
of the sessions
judge in a case
of culpable
homicide
confirmed in
appeal.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 19th of November 1853.

Remarks by the sessions judge.—Prosecutor, prisoners and witnesses are resident cultivators in neighbouring hamlets, and the fields of the two first adjoin. Early on the night of 11th October last, Gyan (witness No. 4,) a young lad about 19 or 20 years of age, found the water, which had been turned on to the prosecutor's (his father's) field, cut off and taken to the prisoners' by Kewal (prisoner No. 2.) An altercation on the spot commenced between the two, and both called out to their uncles, in the hamlets some distance off. This was responded to by the deceased, a middle-aged powerful man, on Gyan's part, and by Greedharee (prisoner No. 1,) and two others, his relatives, acquitted by the deputy magistrate on Kewal's part, who all ran up armed with sticks or clubs. Both sides came to blows, on which, according to the prosecution, Greedharee (prisoner No. 1) struck the deceased a blow on the head with an *abha*, which felled him to the ground, the three others beating him when down.

The deceased reached the thannah in a speechless state, and died *en route* to the station, where the *post-mortem* examination, as deposed to by Dr. Diaper, showed externally "a severe contused wound on upper part of the head, about two inches long, and internally extensive injuries, compress of the brain caused by the external violence," besides abrasions and contusions.

The two prisoners' persons, as also those of their two relatives, Horil and Khoobhal, (acquitted,) showed marks of blows.

The prosecution, as above narrated, exclusive of Gyan (witness No. 4,) is supported by two eye-witnesses, Tiluk (No. 1) and Doolum (No. 2,) and Jhurree (No. 5,) chowkeedar of the village, as also originally by Meghun (No. 3,) who however deliberately perjured himself before this court, and for which his committal has been directed.

The prisoners plead *not guilty*, adopt the origin and circumstances of the quarrel as told by the prosecution, with the exception that it was Keyman, the prosecutor's eldest son, who, missing Greedharee, at whom it was aimed, struck the deceased the fatal blow on the head with an *abha*; and in support of this version have produced four witnesses before the deputy magistrate's and this court.

The *futwa* of the law officer, rejecting Gyan's (witness No. 4) evidence, noting the incompleteness of Meghun's (witness No. 3,) and discrepancy by the prosecutor's statement, of the fatal blow having been struck by a *ghurrasa* (loaded club,) instead of an *abha*, doubts the proofs as maintaining the charge of culpable homicide, and acquits the prisoners.

Relationship alone is no proper ground for rejecting Gyan's (witness No. 4) testimony, if found satisfactory in other respects. The incompleteness of Meghun's evidence is accounted for by his having perjured himself, at the same time that it bears sufficient internal evidence of its own baseness, tending rather to damage the defence than the prosecution. Before this court, he swore to the occurrence in its main features, but with a change in the names of the offenders, by making out the two prisoners acquitted by the deputy magistrate to be the deceased's assailants instead of the two prisoners under trial, as originally sworn to by him before the deputy magistrate, both before the police and deputy magistrate. The prosecutor certainly called the weapon a *ghurrasa*, but he was sick at the time of the occurrence, and by all accounts did not reach the spot until afterwards. Besides, an *abha* itself is in reality nothing but a thick, short, heavy wooden club, sometimes shod with iron, and in general use for irrigation purposes in letting water on and off. With usual native carelessness, it might be indifferently called a *ghurrasa*, but the witnesses for the prosecution, as indeed also for the defence, have always called it an *abha*, and as the fatal wound itself corresponds to the injury, which would probably have been inflicted either by a *ghurrasa* or such a weapon, in either case such discrepancy seems very immaterial.

The facts of the case generally stand acknowledged on both sides, and the point for decision narrows itself into the consideration, whether the deceased was killed by the blow struck by the prisoner Greedharee, according to the four witnesses for

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Case of
GREEDHAREE
and another.

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GREEDHAREE
and another.

the prosecution, or through mistake by the prosecutor's son Keyman, according to the four witnesses for the defense.

I find the tale for the prosecution to have been always told consistently with every appearance of truthfulness, and to be materially corroborated by circumstances generally, whilst that for the defence is as palpably tutored, inconsistent and circumstantially incredible.

The prisoners, on their own showing, were the aggressors, for Greedharee told the police that the water had been turned on to the prosecutor's field, when Kewal interfered. It was at the least a very trivial matter for violent quarrel between two bordering cultivators, and perhaps would not have originated any but for the ill-will of old standing between both parties, of which the prisoners formed the strongest, and the prosecutor the weakest party, as is manifest on the face of the record itself, for whilst the four prisoners originally showed, or pretended to show, marks of blows on their persons, it is not even alleged that there were, on the deceased's side, any one besides the prosecutor's two lads, Keymun, the eldest by a year or two, and Gyan, the former of whom and the deceased are the only two persons accused of having struck the prisoners' party. But the lads evidently kept aloof from the fight, for neither appear to have been injured. Keymun, even according to the witnesses for the defence, only reached the spot as the broil commenced. Beside Gyan and Kewal's altercation ended in both calling to their uncles, the deceased on the one side, and Greedharee on the other, and it was only on their reaching the spot, that blows were exchanged. The fact is the deceased was a powerful man, the prop of his party, (for the prosecutor looks a weak creature,) an equal match for Geerdharee, and only to be overcome by numerous assailants whom Greedharee, as the strongest of the two parties, could best muster. Keymun could scarcely have engaged in such an affray without being marked. On the other hand, the tale of the four witnesses for the defence is just as circumstantially deficient. Besides, their story told by rote, I could elicit no probable explanation from them, regarding the way in which Keymun struck the blow they deposed to, and their hesitating manner itself was sufficient to condemn their testimony. To my mind also, any such blow, with such a weapon, by mistake, is highly improbable. Any thing of the kind might possibly happen with a long unwieldy weapon like a *lattee*, but not with a short heavy cudgel like an *abha*, about two feet long, and which could only have been wielded in close contact under ample control, when the chances of any thing of the kind occurring by mistake are greatly reduced. Add to this, it is unaccountable how the deceased's four assailants and the prisoners' four

witnesses, altogether eight persons on the spot on their side, would ever have allowed Keymun to approach so near armed in such a manner. Two of these four witnesses, the prisoners' relatives also, *viz.*, Lalmun (No. 11) and Chedoo (No. 12,) state they saw Keymun running up to the spot with the *abha* in his hand, and Lalmun accounts for not having stopped him because he had a fever, and Chedoo, because he was on the opposite side, whereas all four flatly contradict each other how each stood by one another on the spot. Utterly disbelieving the defence set up, and finding nothing to shake, but rather every thing to confirm the evidence for the prosecution, I convict Greedharee (prisoner No. 1) of the culpable homicide of the deceased, and Kewal as his accomplice therein, and considering the wilful recklessness with which loaded bludgeons, or heavy weapons, are thus used in petty broils, and which I cannot understand any assailant would direct at his adversary's head without intending to do him grievous bodily injury, as proven by the *post-mortem* examination in the present instance, I would sentence Greedharee to seven (7) years' imprisonment in labor and irons and Kewal to three (3) years with labor without irons, the labor commutable to a fine of rupees 30, payable within one month.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. A. J. M. Mills.)—*Sir. R. Barlow.*—I see no reason to interfere with the sessions judge's sentence, and with reference to his arguments and the frequency of such assaults in Behar, I would confirm his orders.

Mr. A. J. M. Mills.—I concur with Sir Robert Barlow in the conviction of the prisoners, and in the sentence proposed by the sessions judge. The warrant will issue accordingly.

1853.

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Case of
GREEDHAREE
and another.

PRESENT:

H. T. RAIKES Esq., Judge.

GOVERNMENT

*versus***AKBAR (No. 1,) JUMMUROODEEN (No. 2,) PEER MA-HOMED (No. 3,) AND DEMLUT MANJHEE (No. 4.)****TIPPERAH.****1853.****December 29.****Case of
AKBAR and
others.****Conviction
and sentence
passed by the
sessions judge
on a charge of
perjury,
upheld in
appeal.**

CRIME CHARGED.—No. 1, perjury, in having, on the 2nd July 1853, corresponding with 19th Assar 1260 B. S., deposed under a solemn declaration taken instead of an oath before the magistrate of Tipperah, that on the 21st Bysakh last, he was assaulted at the Chandpore Bazar by Charoo Meajee, a peon in the service of Nursing Poddar, Brijokishore Moonshee and others, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. Nos. 2, 3 and 4, perjury, in having, on the 2nd July 1853, corresponding with 19th Assar 1260 B. S., deposed under a solemn declaration taken instead of an oath before the magistrate of Tipperah, that on the 21st Bysakh last, they had witnessed an assault committed upon Akbar (plaintiff), at Chandpore Bazar, by Charoo Meajee, a peon in the service of Nursing Poddar, Brijokishore Moonshee and others, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.**Committing Officer**—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 12th September 1853.

Remarks by the sessions judge.—Two influential zemindars have, for some time past, been on bad terms regarding a *chur*, the right to which is claimed by both. The prisoners are servants of Gourkishore Moonshee and the witness Charoo Meajee is a peon of Brijokishore Moonshee. Charoo Meajee, on the 28th of February, brought a complaint of assault against several of Gourkishore Moonshee's dependants, some of whom were punished, and among them one Poran, who appealed from the sentence passed by the kazee to the magistrate. Hearing that such an appeal had been preferred, the plaintiff Charoo Meajee hastened into the station, and on the 2nd May personally executed a mooktearnamah, with the object of maintaining the connection of Poran and his associates.

The prisoner Akbar, on the 6th May, laid a complaint against Charoo Meajee and others, whom he described as dependants of Brijokishore Moonshee, charging them with having assaulted him, depoiled him of Company's Rupees 25-8, and

compelled him to sign a blank stamp paper. The date assigned as that in which this occurrence took place was the 2nd May, precisely the day on which Charoo Meajee executed a mooktearnamah 40 miles away from Chandpore Bazar, where he was declared to have assaulted the plaintiff. As it was physically impossible, that he could be at two places so wide apart on the same day, steps were taken by the magistrate to ascertain the true character of the charge against him, and the result was the commitment of Akbar and his witnesses (the prisoners) on a charge of perjury.

They pleaded *not guilty*.

The witness Charoo Meajee deposed to what I have narrated and to the fact of no other person of his name being in the employ of Brijokishore Moonshee. The witness Lal Shahoo (No. 2) gave evidence on the latter point also, and it being his special duty to pay Brijokishore Moonshee's servants their wages, he is of course well acquainted with them personally. But I may here remark, that the identity of the witness Charoo Meajee, with the Charoo Meajee against whom the prisoner Akbar brought the charge of assault and robbery, would appear to be satisfactorily set at rest (independently of the strong evidence to that point) by the statement of Akbar himself, when asked in the magistrate's court in his capacity of plaintiff, whether the Charoo Meajee, whom he accused of having assaulted him, had brought any charge in the criminal court against himself, the plaintiff, or against any one else, the answer was in the affirmative, that he had brought a charge against one Akbar Sircar and others. This is the very complaint, the conviction on which of Poran, Charoo Meajee came to the sudden station to support, and it is therefore obvious that he was the party whom the prisoner sought to get punished in retaliation. I doubt not of his successful complaint against Gourkishore Moonshee's people. The darogah was directed to inquire, and Brijokishore Moonshee to report, whether there was more than one Charoo Meajee in the employ of the latter. The reply by both was in the negative. The darogah examined 32 persons, 30 of whom declared that there was no person who bore the name of Charoo Meajee but the witness No. 1. The remaining two deposed, that two other persons in Brijokishore Moonshee's service bore that name, one living somewhere on the west of the Megna river and the other at Kalea chur. The darogah could not find the first, as may be supposed, from so vague an address. The second he discovered and found to be 57 years of age, instead of 47, as stated by these two witnesses, and to bear the name of Charoo Holdar, denying that he had ever been designated Meajee or had ever been in Brijokishore Moonshee's service.

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To complete the proof of the untrustworthy character of the evidence of these witnesses, I need only add, that they were named for the defence, when they distinctly contradicted their statements before the darogah, and deposed that there was no Charoo Meajee in Brijokishore Moonshée's service, but the one in question, and that they had been tampered with, to state the contrary.

The execution of the mooktearnamah by Charoo Meajee, on the 2nd May, was proved by the mooktear who drew it up and by another who accepted it, both being respectable men. The former distinctly recollects writing it on the 2nd May, the latter could not speak so positively on that point. It bears itself that date. The defence was, that the Charoo Meajee against whom the complaint had been brought was another individual and not the witness No. 1. Three witnesses were called in support of this defence, two of whom, as I have already mentioned, deposed to the fact that no Charoo Meajee but the one in question was in Brijokishore Moonshée's service.

The Mahomedan law officer convicted the prisoners of perjury and declared them to have incurred *tazeer*.

In this finding I have concurred, there appearing to me to be sufficient circumstantial proof that the prisoners had combined, as dependants of Gour Chunder Moonshée, to bring and maintain a false charge against Charoo Meajee, in retaliation of his more successful complaint against Akbar Sircar, Poran, and others. When a prosecutor gets up a false charge and maintains it by false evidence in the indulgence of personal spite, I should be inclined to consider his guilt greater than that of his witnesses, and so make a certain difference in their punishment. In the present instance, there seems to have been no particular personal ill-feeling on the part of the prisoner Akbar against Charoo Meajee. He acted as plaintiff, and the remaining prisoners as witnesses, because they were Gour Chunder Moonshée's dependants, and it was thought advisable to bring Brijokishore Moonshée's servants and especially Charoo Meajee, who shortly before had succeeded in getting two of Gour Chunder's punished, into trouble.

The sentence I passed is mentioned in column 12.

Sentence passed by the lower court.—Nos. 1, 2, 3 and 4, each to five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The only defence set up by the prisoners is, that they deposed against another Charoo Meajee, not against the one in question. The circumstances detailed by the sessions judge, however, sufficiently identify the Charoo Meajee in this case as the party against whom the accusation was

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brought, and the depositions of the prisoners given; the charge appears to me to be most clearly established against all of them, and I see no reason to interfere with the conviction or sentence. The appeal is therefore rejected.

1853.

December 29.

Case of
AKBAR and
others.

PRESENT:

A. DICK, Esq., Judge.

GOVERNMENT AND MUSST. JUDOOBUNSEE

versus

LUNGTOO CHAMAR (No. 1) AND MUNOHUR CHAMAR (No. 2)

CRIME CHARGED.—Wilful murder of Ghoora Chamar, husband of Musst. Judoobunsee.

Committing Officer—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 21st November 1853.

Remarks by the sessions judge.—The facts of the case are briefly these.

On the evening of the 15th October 1853, the deceased brought the carcase of a bullock from the house of his jujman, Shewpershad Pandey, to his own premises.

The two prisoners, who (as well as the deceased) are "chamars," claimed a share in the hide, which the deceased refused to coincide. A quarrel ensued and the prisoners attacked him, and dragging him to a well, which was some yards from the spot, pushed him into it with their sticks and ran away.

The prosecutrix and several eye-witnesses depose to the above facts, and all are unanimous in describing the deed as evidently wilful, the purpose being made manifest by the act of dragging the unfortunate man to the well and there throwing him down.

Information was given at the thannah the same night, but the corpse was not taken out till the next morning, the police officers not being able, as they allege, to obtain the means of doing so during the night.

The well was deep and contained between 5 or 6 feet of water.

The corpse was so decomposed as to be unfit for medical examination, and the evidence of the civil surgeon has therefore no important bearing on the case.

The prisoners plead *not guilty*, but make no defence worthy of notice.

The *futwa* declares the prisoners *guilty* of wilful murder, but holds *kissas* to be barred owing to the minority of the eye-witnesses.

SHAHABAD.

1853.

December 30.

Case of
LUNGTOO
CHAMAR and
another.

Prisoners convicted of culpable homicide by throwing a man into a well, sentenced to fourteen years' imprisonment.

1853.

December 30.

Case of
LUNGTOO
CHAMAR and
another.

A second *futwa* declares, that had the prisoners not been in a state of ineptitude, and had the eye-witnesses not been of the same caste and relatives of the murderers (prisoners) and the prosecutrix, they would have been liable to *kissas*.

I concur in the *futwa*.

The evident intention of the prisoners, in the commission of the act, which inevitably resulted in the death of the deceased, clearly brings their crime within the category of murder.

At the same time, the deed was perpetrated during the heat and irritation of a personal quarrel, and there was not, in my mind, that cold-blooded and deliberate *malitia precogitata*, which alone demands a capital sentence.

The evidence does not establish the fact, but there is sufficient on the record to raise a presumption that all the parties engaged in the quarrel had been excited by drinking: the well was within a few yards of the spot when the quarrel commenced, and it appears probable that the idea of knocking the deceased into it suggested itself only at the moment, and was not a pre-conceived or concerted deed.

Under these circumstances, I cannot recommend a capital sentence, but would propose that the prisoners be sentenced to imprisonment in transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The testimony of the eye-witnesses, carefully considered and compared, as given at the thannah, in the magistrate's court, and at the trial in sessions, proves that the prisoners and deceased were quarrelling and fighting, and that the deceased was *pushed* into the well, which was close by. The Court therefore convict the prisoners of culpable homicide, and sentence them to fourteen (14) years' imprisonment with labor and irons.

The Court observe that the *futwa* makes no allusion to minority, and the ages of the eye-witnesses are 40, 30 and 20 years. They also remark, that the eye-witnesses said nothing of *dragging* the deceased, until in answer to almost a leading question in sessions.

CASES IN THE NIZAMUT ADAWLUT. 1009

PRESENT :
H. T. RAIKES, Esq., Judge.

GOVERNMENT AND OMASUNKER SUBNOKAR
versus

TARUN DEY (No. 2,) GREEDHUR GHOSE (No. 3),
AND MANICK GHOSE (No. 4.)

CRIME CHARGED.—Dacoity with wounding in the house
of the prosecutor, in which property to the value of rupees 116
was plundered.

CRIME ESTABLISHED.—Dacoity attended with wounding
and plundering.

Committing Officer—Mr. G. Hewett, deputy magistrate
of Cutwa.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on
the 4th October 1853.

Remarks by the sessions judge.—The prisoners have all pleaded
not guilty, but from the statement of the prosecutor and
the testimony of the only two eye-witnesses who attended at
the trial, the crime charged is satisfactorily proved.

There was no previous acquaintance between them and the
prisoners, so there could be no enmity. By the light of
several torches, the eye-witnesses saw the prisoners sufficiently
clearly to be able to swear to them. They also deposed to
having wounded some of the dacoits, and witness No. 22 having
observed prisoners Nos. 2 and 3 with severe wounds on their
persons, without knowing that the dacoity had been committed,
gave information to the police of the fact, and stated his sus-
picions that they had been engaged in some illegal act, upon
which they were seized. Through similar information given
by witness No. 8, the police also took up the third prisoner,
when he voluntarily confessed having been engaged in the
dacoity, and implicated the other two. This confession was re-
peated before the deputy magistrate, but retracted before me,
as is usually the case after a confessing prisoner goes into
jail. The prisoners made exculpatory defences and called wit-
nesses in support of them, most of whom were their own rela-
tions or connexions, whose evidence did not agree as to time
or date with the defences made by the prisoners, and were
in other respects inadmissible, the three prisoners having
wounds on their persons, which they could not account for in
a satisfactory manner. The confessions made by Manick
Ghose, and their recognition by the prosecutor and eye-
witnesses as being amongst the dacoits whom they saw by the
light of several torches, clearly proved the charge against them.
The prisoners have appealed to the Nizamut Adawlut.

NUDDEA.
1853.

December 30.

Case of
TARUN DEY
and others.

Conviction
and sentence
passed by the
sessions judge
in a case of
dacoity with
wounding, up-
held in ap-
peal.

1010 CASES IN THE NIZAMUT ADAWLUT.

1853.
December 30.
Case of
TARUN DEY
and others.

Sentence passed by the lower court.—To be imprisoned in banishment from the zillah, with hard labor and in fetters, for the term of nine (9) years, two (2) of which are awarded in lieu of corporal punishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—I see no reason for interfering with this conviction. The appeal is rejected.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

JULALOODEEN SHEIKH.

24-PERGUN-
NAHS.
—
1853.

December 30.
Case of
JULALOODEEN
SHEIKH.

The prisoner was convicted and sentenced to five years' imprisonment, for forging certificates of character, by means of which he endeavoured to obtain employ in the police. Appeal rejected.

CRIME CHARGED.—1st count, forgery of a testimonial of character in the English language, dated 5th May 1853, marked A, purporting to be signed by Sir Frederick Currie, Bart., late member of council; 2nd count, forgery of a testimonial of character in the English language, dated 23rd February 1840, marked C, purporting to be signed by F. C. Smith, Esq., formerly superintendent of police, Lower Provinces; 3rd count, forgery, by alteration and erasure, in an original perwanah, marked D, under the seal and signature of F. C. Smith, Esq., superintendent of police, Lower Provinces, dated 7th December 1853, and 4th count, uttering all or any of the above documents, well knowing them to be forged, by fraudulently presenting them to the magistrate of 24-Pergunnahs, with a view to impose upon the said magistrate and thereby to obtain employment in the police force of the 24-Pergunnahs.

CRIME ESTABLISHED.—Uttering two forged testimonials of character in the English language and an original perwanah, with erasure and alterations, under the seal and signature of F. C. Smith, superintendent of police, Lower Provinces, the same being a public document, by fraudulently presenting them to the magistrate of the 24-Pergunnahs, with a view to obtain employment in the police force.

Committing Officer—Mr. E. A. Samuels, magistrate of 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 27th September 1853.

Remarks by the officiating additional sessions judge.—The prisoner was desirous of getting employment in the police force of 24-Pergunnahs, and with that view waited on the magistrate with an application, accompanied by a testimonial of character in the English language, purporting to be signed by Sir Frederick Currie, Bart., late member of council, another by Mr. F. C. Smith, late superintendent of police, Lower Provinces,

and an original perwanah, altered and erased, to suit his purpose, with the official seal and signature of the latter gentleman. The magistrate, suspecting that the English certificates were not genuine, retained all the papers the prisoner had presented, and desired him to go to the office in a day or two, when he should learn what the magistrate's intentions were with regard to him. Mr. Samuell, in the mean time, got the certificates tested by parties familiar with the signatures of the alleged grantors, and having satisfied himself that the testimonials were fabricated, and the perwanah altered, had the prisoner arrested and committed him for trial. The Hon'ble Mr. Lowis, member of council, and Mr. E. Potter, clerk on the establishment of the superintendent of police, Lower Provinces, proved that the signatures alleged, respectively, to be those of Sir F. Currie and Mr. F. C. Smith were not genuine, and private servants of the former gentleman, and native officials attached to the office of superintendent of police, gave evidence to the fact, that the prisoner was never employed by those gentlemen in the manner set forth in the English certificates. The Persian perwanah was originally addressed to Torabudeen Koranmullah, the prisoner's brother-in-law, granting him leave of absence for three months on account of sickness and acceding to his request to allow his relative, Julaloodeen, the prisoner, to act for him during his absence. The mutilation of and alteration in this record was the substitution of the words "*Turaboolee Nazir*," for "*Torabodeen Koranmullah*," on Turaboolee having been a nazir on the establishment at some period. The prisoner actually served as *koranmullah* in the superintendent of police's office for three months, under the authority of the perwanah in question, but the mutilation was obviously made with the view of furthering his pretensions, as advanced in the forged testimonials which speak of his past service as a nazir. The prisoner denied the charge, and maintained that the documents he presented to the magistrate were made over to him by the gentlemen whose names they bear. He named three witnesses to character, but only one appeared, and spoke of him as gaining a livelihood honestly by binding and dressing servants' turbans, which appears to have been his employment on Sir Frederick Currie's establishment, whenever his services were required. The magistrate's examination will be found conclusive as to the uttering of the forged and altered documents by the prisoner. The sentence is heavy, but I have imposed it in consideration of the mutilation of a public record under seal and attestation involved in the charge.

Sentence passed by the lower court.—To be imprisoned with labor and irons for five (5) years.

1853.

December 30.
Case of
JULALOO-
DEEN
SHEIKH.

1012 CASES IN THE NIZAMUT ADAWLUT.

1853.

December 30.

Case of
JULLALOO-
DEEN
SHEIKH.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner, in his petition of appeal, merely states that he is dissatisfied with the judgment of the sessions judge. The man's fraud and rascality are patent on the evidence. I confirm the sentence.

PRESENT:

A. J. M. MILLS, Esq., Judge.

GOVERNMENT AND NAMA RUJWAR

versus

GOODREE (No. 1,) NULLOO RUJWAR (No. 2 APPELLANT,) JHUNDOO (No. 3,) BUNDHOO (No. 4,) AND MOHEL RUJWAR (No. 5 APPELLANT.)

BEHAR.

1853.

December 30.

Case of
NULLOO RUJ-
WAR and
others.

Conviction
and sentences
passed by the
sessions judge
in a case of
dacoity, upheld
in appeal.

CRIME CHARGED.—Nos. 1, 2, 4 and 5, 1st count, dacoity and plunder of property valued at rupees 120; 2nd count, belonging to a gang of dacoits within the meaning of Act XXIV. of 1843; 3rd count, No. 2, having in his possession part of the above plundered property, valued at rupees 2-12, well knowing the same to be such at the time. No. 3, having in his possession a portion of the aforesaid plundered property, valued at rupees 4-5, well knowing the same to be such at the time.

CRIME ESTABLISHED.—Nos. 1, 2, 4 and 5, dacoity and plunder of property valued at rupees 120, and No. 3, having in his possession a part of the above plundered property, valued at rupees 4-5.

Committing Officer—Mr. A. G.. Wilson, deputy magistrate of Nowada, with the powers of a magistrate.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 4th August 1853.

Remarks by the sessions judge.—The prosecutor resides in the small village of Husna, principally inhabited by low caste *mooshurs*. During the night of 15th June last, his house was attacked and plundered by a large band of dacoits, said to have been upwards of 40, chiefly *rujwars*, amongst whom was Mohel (prisoner No. 5,) the only *rujwar* resident of Husna, the others recognized being of different villages in the neighbourhood.

None of the *mooshur* residents of Husna venturing to oppose the *rujwar* dacoits, Dumer (witness No. 1,) the chowkeedar, his son, Sookhun (witness No. 3,) and the burrail of the village, Sheikh Edoo (witness No. 2,) kept aloof, but recognized Goodree (prisoner No. 1,) Nulloo (prisoner No. 2,) Bundhoo (prisoner No. 4,) and Mohel (prisoner No. 5,) as active in the attack.

The prosecutor, until he managed to escape outside, had recognized these four prisoners, as did also his nephew, Than Singh (witness No. 5,) an intelligent young lad. Musst. Golab

(witness No. 4,) also recognized Nulloo (prisoner No. 2,) and Mohel (prisoner No. 5,) as having plundered her of her ornaments. The evidences to the prisoners' recognition have invariably been consistent.

The information thus given led to Goodree's apprehension, when he confessed to his having committed the dacoity, in company with Mohel and others, and to his having secreted his share of the plundered property at Jhundoo Chunars (prisoner No. 3,) where search following, articles Nos. 1 to 12 inclusive, identified as being portion of the plundered property, were found concealed in and about his premises. Nulloo's apprehension followed. He too confessed, but without naming his associates, and voluntarily gave up a brass plate and vessel as his share of the booty. Before the deputy magistrate, both revoked their confessions, when, and before this court, Goodree confined his defence to a simple denial, calling two witnesses before the magistrate, who knew nothing in his favor. Nulloo said the brass plate and vessel were his own, and called several witnesses, who knew nothing about them. He repeated the same story before this court, with similar results, adding also that the prosecutor had accused him from frivolous motives, although he had previously told the magistrate he had done so on suspicion. Jhundoo told the police he had concealed the recovered property as brought to him for that purpose by Goodree. Before the magistrate and this court he claimed it as his own, naming two witnesses, one of whom, Gopal, chowkeedar of the village, also Goodree's witness, knew nothing, and the other, Keramut Meyan, not summoned by him before this court, he admitted, was only witness to his good character, though named by him before the deputy magistrate as the person from whom he had procured the article (No. 7.) The articles Nos. 7 to 12 inclusive were of a kind very unlikely to have been lawfully possessed by a person of the prisoner's class. Bundhoo and Mohel Ruiwar set up no particular defence—the former is Goodree's brother, and the latter pretending an *alibi* before the deputy magistrate, abandoned it before this court, simply calling witnesses to character, who knew nothing favorable to him.

Had the prosecution not been trustworthy, the prisoners' defences would scarcely have been so weak and inconsistent, or tend so materially to support the original confessions before the police and the recovery of the plundered property. I find no reason to doubt the prosecution, and convict and sentence the prisoners as within.

Sentence passed by the lower court.—Nos. 1, 2, 4 and 5, to seven (7) years' imprisonment with labor and irons, and No. 3 to five (5) years' imprisonment with labor in irons.

1853.

December 30.

Case of
NULLOO RUJ-
WAR AND
OTHERS.

1853.

December 30.

Case of
NULLOO RUJ-
WAR and
others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners Nos. 2 and 5 have appealed. They rest their appeal on inconsistencies and contradictions in the evidence of the prosecutor and his witnesses, and on the allegation of enmity. I do not find that there are any material discrepancies in the depositions in question. The prisoners were named in the first statements of the prosecutor and the witnesses, and their recognition is distinct.

I reject the appeal, and confirm the conviction and sentence.

PRESENT:
J. DUNBAR, Esq., Judge.

GOVERNMENT

versus

RAJKISSEN BHUTTACHARJEA.

24-PERGUN-
NAHS.

1853.

December 30.

Case of
RAJKISSEN
BHUTTA-
CHARJEA.

Prisoner,
convicted of
forgery in mu-
tilating a pub-
lic record, by
erasing cer-
tain words,
sentenced to
five years' im-
prisonment.
Appeal reject-
ed.

CRIME CHARGED.—Forgery, in having, with intent to defraud, erased the words "*purohit jujman*" from an original roobukaree dated 3rd November 1845, deposited in the record office of the magistrate of the 24-Pergunnahs and connected with a charge of assault preferred by Rajkissen Bhuttacharjea against Soodaram Mitter and others.

CRIME ESTABLISHED.—Forgery, in mutilating a public record with fraudulent intent.

Committing Officer—Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 6th August 1853.

Remarks by the officiating additional sessions judge.—This is a daring act of mutilating a public record in a Government depository, in the presence of the official keepers. The prisoner, it appears, went to the record-room of the 24-Pergunnahs magistracy on the 30th of March last, and asked to see the record of a case of assault preferred by him in 1845 against Soodaram Mitter and others, with a view of taking an authenticated copy of the final decision. The record-keeper directed him to be furnished with the record, and he sat down and began to examine it. After a while, he was observed by the mohafiz, who happened to look that way, to hold a sheet of paper over the *nuthee* and rub with his finger under the covering so formed. Fancying that he spilt ink over the papers, the record-keeper desired his mohurirs to see what the prisoner had done, when they found that he had wet his finger with spittle and nearly effaced the words "*purohit jujman*" from the body of the decision. He was arrested on the spot, and taken before the peshkar of the court, the magistrate not having arrived, where he implored to be forgiven, urging his

brahminal descent as the plea of mercy. His object in wishing to efface these words was to neutralize and counteract the evidence that might be made against him by the production of a copy of the decision in question, in an action brought by him in the civil court, in the replication in which he had distinctly set forth, that his ancestor, Nundaram Bhuttacharjea, never had a *jujman* in the village of Panehatty and never lived there, while it was clearly ruled in that decision, that the charge of assault then tried and decided originated in a quarrel about *jujmani* rights, which being hereditary must have been enjoyed by and acquired from progenitors. It was to reconcile these conflicting statements, that the fraud was perpetrated, but it was a clumsy performance and could not fail to be detected. The prisoner makes a frivolous excuse of being the victim of ill-will entertained towards him by a distant relative of the record-keeper, for having caused his arrest whilst a proclaimed offender, and charges that officer with conniving at his ruin. He named several witnesses to his defence, but only called one, who simply speaks to the fact of his being descended from respectable parents. The evidence against the prisoner is most conclusive and the commitment admirably arranged.

Sentence passed by the lower court.—To be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The appeal was made through the agency of a *mooktear*, for whose attendance the hearing of the case has been three times postponed.

Further postponement appearing unnecessary, the case is now taken up and the record perused.

The prisoner, in his petition of appeal, asserts, that the mohafiz himself mutilated the roobukaree, and putting it into his hands, set up a shout and called out to others that he had caught him (the prisoner) in the act. He admits, however, that he is unable to furnish any evidence to prove this. The case is a clear one and admits of no defence.

The sentence is confirmed.

1853.

December 30.

Case of
RAJKISSEN
BHUTTA-
CHARJEA.

1016 CASES IN THE NIZAMUT ADAWLUT.

PRESENT :
H. T. RAIKES, Esq., Judge.

GOVERNMENT ON THE PROSECUTION OF PAGULRAM
LOTABODDEE

versus

MONEERAM LOTABODDEE (No. 33,) KUNNUCKRAM
LOTABODDEE (No. 34,) NEECHINTRAM LOTA-
BODDEE (No. 35,) AND SHODARAM LOTABODDEE
No. 36.)

SYLHET.

1853.

December 30.

Case of
MONEERAM
LOTABODDEE
and others,

Prisoners
charged with
wilful murder
and other
counts, ac-
quitted owing
to the insuffi-
ciency of the
evidence.

CRIME CHARGED.—1st count, Nos. 33, 34 and 35, wilful murder of Joogulram; 2nd count, No. 36, accessory after the fact charged in the 1st count, and 3rd count, No. 36, privity to the crimes charged in the 1st and 2nd counts.

Committing Officer—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 19th November 1853.

Remarks by the sessions judge.—The prosecutor states that his brother Joogulram went to fish in a jheel called Dulwah Diggee, and that soon afterwards, hearing a noise, he went out and saw Moneeram, Kunnuckram and Neechintram striking the water and calling out, “an otter, an otter.” That his brother not returning, he called his neighbours together, and taking the prisoners with him, went to the jheel, and that they found his brother’s body in the very place where the prisoners pretended they were killing an otter. That the prisoners frightened him, and that they then burnt the boy’s body and deterred him from making a report of the case to the thannah.

The prosecutor’s story is fully borne out by Myahram, Hongseeram and Roghooram, who confirm his statement in every particular.

The prisoners Moneeram, Kunnuckram and Neechintram, both before the darogah and the magistrate, admit their killing, as they supposed, an otter, but there can be no doubt that they murdered the boy wilfully.

It was evening, but quite light enough to see what they were about, and indeed, in one part of his confession to the darogah, Moneeram states, that Kunnuckram pursued the boy for taking a fish, and that he supposes the boy fell into a hole.

The prisoner Shodaram confesses to his being aware that the boy had been killed, and to his having aided in burning his body on the same night, so that he is clearly, by his own confession, an accessory after the fact.

The witnesses who saw the body depose to a blow on the head, and to blood flowing from his nose and mouth, so that the boy’s death was doubtless caused by blows on the head.

The cause of the murder is not apparent. The prosecutor stated there was a great quarrel about the jheel, but this is not supported by the evidence of his neighbours, but it is probable that the boy was pilfering fish from the fish-traps of the prisoners, and that this led them to perpetrate the murder. The assessors convict Moneeram, Kunnuckram and Neechintaram of the wilful murder of Joogulram, and Shodaram of privity and of being an accessory after the fact, and in this verdict I concur, and would recommend that the three first-named prisoners should be imprisoned for life in banishment beyond the seas, and that Shodaram be imprisoned with labor in irons for seven (7) years.

As there is no evidence that Dabeeram, Krishnoram, Kuntheeram and Sheeboram were actually present when the boy's body was burnt, I have, in conformity with the assessor's verdict, acquitted and released them.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—It appears that the whole of this affair took place at night. In the early part of the night in question, the neighbours were attracted by the noise made by the prisoners shouting out, "an otter, an otter," and they saw them apparently engaged in striking the water, either to kill or drive away the animal. At a much later period of the night, the prosecutor, feeling alarmed at the absence of his brother (the deceased,) went with the neighbours to look for him, and asked the prisoners to accompany him and point out the place where they had seen the otter. This they at once complied with, and two of them searched in the water and found a *kachee* which was known to belong to the lad: a bamboo was then procured, as the place was full of weeds, and with this the body was brought to the surface.

The prisoners declare that no marks of violence were visible on it, and that the neighbours, not believing they had caused the boy's death, advised the prosecutor to burn the body, without subjecting the village to a visit from the police.

There is no doubt, whether the body bore marks of violence or not, that the prosecutor took it home, had it burnt and never complained, but some days afterwards intelligence of the affair was conveyed to the thannah, and then this charge was brought against the prisoners by the police.

There is however no satisfactory proof against the accused; nothing, in fact, beyond a suspicion, that the boy was beaten by them, can be gleaned from the evidence, and nothing whatever to justify a conviction of wilful murder. I acquit all the prisoners.

1853.

December 30.

Case of
MONEERAM
LOTABODDEE
and others.

PRESENT:
A. DICK, Esq., Judge.

GOVERNMENT AND MUSST. JHOONEEA

versus

DOOMDA SINGH.

SHAHABAD.

1853.

December 31.

Case of
DOOMDA
SINGH.

Conviction
and sentence
passed by the
sessions judge
in a case of
culpable ho-
micide, arising
out of a cattle
trespass, up-
held in ap-
peal.

CRIME CHARGED.—Being an accomplice in a riot attended with wilful murder of Shewbux Aheer, husband of Musst. Jhooneea, the prosecutrix, and wounding Rughobur Aheer alias Soojaraee Aheer and Koonjbeharee Singh.

CRIME ESTABLISHED.—Accomplice, in culpable homicide of Shewbux Aheer, husband of Musst. Jhooneea, the prosecutrix, and wounding Rughobur Aheer and Koonjbeharee Singh.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 12th September 1853.

Remarks by the sessions judge.—This is one of the customary affrays of this district, with the usual tragical result. Some cattle belonging to Nundal Singh were found, *damage feasant*, in the field belonging to the deceased. Koonjbeharee Singh, who had a share in the land, gave the cow-herd a box on the ear, when a body of men armed with swords, *gurasses* and sticks rushed to the spot, attacking Shewbux, killed him on the spot, and wounded two others of his party.

These facts are established by the evidence of eye-witnesses. The evidence of the civil surgeon shows that death was caused by the wounds received.

The prisoner pleads an *alibi* and supports it by the evidence of two of his relations.

The plea and the evidence are both unworthy of credit. The principal parties are not yet arrested.

Sentence passed by the lower court.—To be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.)—This appeal is founded on three grounds—*First*, that the statement of one of the wounded men is contradictory of the evidence of the three eye-witnesses: it is not however contradictory: it is only different, and to that degree only, which was to be expected. He was himself beaten, and therefore he was not likely to speak so much in detail of what occurred, as those who were merely lookers-on. *Secondly*, the fact that prisoner had no personal interest in the cattle, or in the crops injured, is a presumption in his favor of little weight against clear direct evidence. *Thirdly*, two respectable persons have proved an *alibi*. True that two persons have testified to his having been 18 miles off, from seven days previous to one day after

CASES IN THE NIZAMUT ADAWLUT. 10th

the affray occurred. This they remembered distinctly, though they could remember nothing else of a like nature! Such general evidence, so feebly supported, can tell little against the most clear and distinct testimony to his active presence in the affray; moreover, they being relatives and friends, were naturally interested in his acquittal; the eye-witnesses being disinterested had no motive to desire his conviction. The Court see no reason for interference with the sentence passed against prisoner.

1853.

December 31.
Case of
DOOMDA
SINGH.

PRESENT:
SIR R. BARLOW, BART., }
AND } Judges.
A. J. M. MILLS, Esq., }

GOVERNMENT

versus

CHOROTEA (No. 3,) POORUN (No. 4,) JUGGOO (No. 5,) CHURKOO (No. 6,) MUNEE (No. 7,) BODHRAM (No. 8,) AND BHORANGA (No. 9.)

CRIME CHARGED.—No. 3, wilful murder of Musst. Bodhuy, and Nos. 4 to 9, accessory to the above crime after the fact.

Committing Officer—Captain W. H. Oakes, principal assistant, governor-general's agent, Lohardugga.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 2nd December 1853.

Remarks by the deputy commissioner.—A brief summary of the first information obtained respecting this case, will be found convenient, and it is therefore given in this place.

On the 6th August last, Anwur Aleo, farmer of one-eighth of the village of Durba, appeared at the police station, and stated that something serious, he did not exactly know what, had occurred in the village, and that Juggoo (prisoner No. 5) should be questioned about it. This was accordingly done. Juggoo, on the same date, stated, that in the month of Assar, a son of the prisoner Chorotea had died; that the said prisoner had therefore killed a woman named Bodhuy, a relative of the examinant, by striking her three blows with an axe, and that the prisoner told him that he had done so because that certain witch-finders had declared her to be a witch; that after the murder, the farmers of the village desired the matter to be kept secret, and that the body had therefore been burned.

The Government is prosecutor in this case.

The prisoners Chorotea and Poorun plead *not guilty*.

The other prisoners plead *guilty*.

Witness No. 1, Musst. Bhooseea, states, that on a Friday morning, in the first half of Assar, she, together with

HAZAREE-
BAUGH.

1853.

December 31.

Case of
CHOROTEA
and others.

Prisoner convicted of wilful murder of a woman whom he suspected of being a witch, and of having bewitched his son, who had died; sentenced capitally, there being no reason to abstain from such sentence with reference to the present condition of the people of the South-west Frontier.

1853.

December 31.

Case of
CHOROTEA
and others.

Boodhuy, Etwarin, Rubdee, and the deceased Bodhuy, were planting crops, and were stooping at the work, when the prisoner Chorotea coming from behind them, struck the deceased three blows on the head, just over the right ear, and killed her on the spot. He then ran away, without having spoken a word. Witness did not see the blows given, but saw the prisoner immediately after he had inflicted them. On the same day, about noon, the prisoners Churkoo (No. 6.) Munee (No. 7.) Bodhram (No. 8.) and the prisoner No. 9, whose name she does not know, carried away the body. Witness lives in the same village as the prisoner Chorotea, but at some distance : has known him from his childhood. On the morning of the day of the murder, his child, of ten days old, died. Witness heard of this before she left the house. Chorotea carried his axe while running off. The wounds were very severe, the brains came out.

No. 2, Musst. Boodhuy.
 , , Musst. Etwareea.

The evidence of these women corroborates in all important particulars that of the first witness.

No. 5, Sheikh Joomun.
 , , Seetulpersaud.

These witnesses prove the apprehension of the prisoners.

The prisoner Chorotea denied the murder. After the eye-witnesses had brought home the murder to the prisoner Chorotea, he then voluntarily confessed the fact. The other prisoners admitted having been concerned in the disposal of the body.

No. 7, Sundial.
 , , Chatoorgon.
 , , 10, Soughundee Singh.
 , , 11, Joorkoo.
 , , 12, Kurroo.
 , , 13, Keerparam.
 , , 14, Muneenath Singh.

These witnesses prove the statements or confessions of the prisoners severally before the police officers.

The confession of the prisoner Chorotea before the police officer is to the following effect:—"I did not murder Bodhuy. At that time, my son had died. I did call in Bisu Singh and Khedu Singh, witch-finders, but they told me nothing. None of the villagers took me up on the charge of murder. I don't know why they charge me with it now. But since Etwaree, Boodhuy, Rubdee and Bhoooin say that they saw me commit the murder, what shall I answer? You are the ruler, you are my father and mother, do with me as you please. My son died, and in this rage, I went, and while she planted "murwa" * in the field, I struck her two blows with an axe :

* *Eleusine stricta*, an inferior kind of grain.

she fell, and I came away. True it is that Bisu Singh and Khedu Singh, witch-finders, told me that Bhoduy, whom I have killed, was a witch and had bewitched my son. Therefore I killed her. I don't know why I denied this at first. Many other children had also been bewitched. All the people of the village said so. This is the case."

The statement of the prisoner Poorun before the police officer is to the effect that he had heard of the murder, but was restrained from giving information by the farmers of the village. They said that such affairs were common, and that the country digested them. Once on a time a woman fell into a well and was drowned, and a man who gave information of it was beaten so severely by the farmers, that he died. Prisoner had once been beaten himself till he became senseless, and he was afraid to give information now.

The confession of the prisoner Juggoo before the police officer is to the effect, that he and others took up the prisoner Chorotea and brought him before the farmers, who desired them to conceal the affair, and that he accordingly helped in burning the body.

The further matters stated by this prisoner do not concern himself and have already been noticed above.

The confessions of the prisoners Churkoo, Munee, Bodhram and Bhoranga, before the police officer, are to the effect, that by order of the farmers, they assisted in burning the body of the murdered woman.

Witness No. 17, Gundoury, proves the confessions of the prisoners Poorun, Juggoo, Churkoo, Munee, Bodhram, and Bhoranga before the principal assistant. These confessions are to the same purport as the former.

Witness No. 18, Anwur Alee, states nothing material.

The prisoner Chorotea in his defence states, that he made no confession before the police officer. He is a herdsman, and because of his cattle trespassing, Juggoo Pahun (the prisoner No. 5) bears him ill-will. His child died after the death of Bodhuy. Juggoo Pahun has, through enmity, entangled him in this affair. Prisoner has no evidence of this.

The prisoner Poorun in his defence states that he took no part in burning the body of deceased.

The prisoner Juggoo in his defence states that he was told by the farmers to burn the body of the deceased, who was his cousin, and he did as he was desired.

The prisoners Churkoo, Munee, Bodhram and Bhoranga, in their defence, state that they only brought wood and did not assist in the actual burning of the body of the deceased.

No. 19, Kurum Alee. { These witnesses speak to the previous good character of the prisoner
 " 20, Poorun. { Juggoo.

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The jury, whose names and occupations are entered below,* find the prisoner Poorun *not guilty*, and the other prisoners *guilty* as charged.

In this verdict I concur. That the prisoner Chorotea committed the murder is fully proved by the evidence of eye-witnesses and by his confession before the police officer, the truth of which I find no reason to doubt. The prisoners Juggoo, Churkoo, Munee, Bodhram and Bhoranga are, by their own confessions, which they have never retracted, guilty as accessories after the fact. Against the prisoner Poorun, there is no evidence that he was accessory, and his offence, if any, was a misprision, with which he is not charged.

The peculiar features of this case are, that it is clearly a witch-craft murder, and that happening, as it did, in open day and in the presence of several witnesses, it was concealed. Formerly, witch-craft murders were frequent in this district; the belief in witch-craft is no less prevalent now than it was heretofore, but fewer murders come to light. Whether they be in fact fewer, it is difficult to ascertain, in the expressive words of the prisoner Poorun, "the country digests them." But every case that is proved demands condign punishment, and I consider it my duty to recommend that sentence of death be passed on the prisoner Chorotea.

The guilt of the other prisoners is not of an aggravated stamp; they acted I have no doubt under the orders of the farmers of the village, whom they scarcely dared to disobey. I think that one (1) year's imprisonment each will be a sufficient measure of punishment. Indeed, were I to act in my own view, I would not punish these men at all. It seems to me far more desirable to reach the real offenders, the professional witch-finders and the village head-men, who systematically conceal atrocious crimes. Had I been acting as magistrate in the present instance, I should have rather released these prisoners, and have used them as witnesses. To punish them will not produce any beneficial effect, it will only inspire an unwholesome fear, the fear of telling the truth. But acting as a judge, I have no business with what may be expedient, and I offer these remarks only by way of suggesting to other minds, matter that I deem worthy of earnest consideration. I believe, that grave crimes are commonly concealed, not from any of the people, but from us, from the European rulers and their servants. If this be so, what are the causes? What the remedy?

The prisoner Poorun has been acquitted and discharged.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. A. J. M. Mills.)—There can be no doubt of the prisoner Chorotea's guilt. The only question to be determined is the measure of punishment which should be awarded on this occasion. The deputy commissioner has recommended that the prisoner be sentenced to death. The crime was committed in Chota Nagpore, within the South-western Frontier Agency. The country has been for many years under the British Rule, and there can now be no reason to suppose that the people are ignorant of our laws and the consequences attendant on the commission of so grave a crime as that of which the prisoner stands convicted.

We see no circumstances which would justify a mitigated sentence in this case, and feel it our duty to sentence the prisoner capitally.

We are of the opinion that the remaining prisoners should be acquitted, and, in concurrence with the suggestion of the deputy direct their immediate release.

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SUMMARY CASES.

PRESENT:

SIR R. BARILOW, BART.,
 J. DUNBAR, Esq.,
 A. J. M. MILLS, Esq., } *Judges.*
 AND
 H. T. RAIKES, Esq.,

GOVERDHUN PAL AND KASHEENATH POORA
versus
 H. TRIPP.

THIS case was referred to the Nizamut Adawlut, under RAJSHAHYE. Section V., Act XXXI. of 1841, and Circular Order dated 18th March 1842, by Mr. G. C. Cheap, sessions judge of Rajshahye, on the 29th September 1853, with the following report:—

The petitioner, a British subject, was under the Statute 53, George III., Chapter 155, Section CVI., for falsely imprisoning Goverdhun Pal and Kasheenath Poora, on their separate informations, sentenced to pay a fine of rupees 50 in each case, half of the fine to be awarded to the individuals above-named.

These two, with eleven others, there can be no doubt, were found in the house of one Gooroochurn Biswas, in the custody of three individuals, who the joint-magistrate sentenced to two (2) months' imprisonment, with fine in lieu of labor, on the 8th of June last, for so confining them, and his order was affirmed by me in appeal on the 29th of July.

In that case, ten out of the thirteen, distinctly deposed to having been confined at Salgurmoodea factory, which is under the management of Mr. Tripp, on the part of Mr. Kenny.

The joint-magistrate now splits the above case into ten, or examines the parties separately; and on their statements *only*, convicts the petitioner of falsely imprisoning them in different places (*sthana, sthana*).

Now, as an information of this kind, when laid, must be proved as laid, and when not so proved, the conviction on it, as defective, must be quashed, I submit the proceedings for the Court's orders, as I cannot, either under Act XXXI. of 1841, or Act IV. of 1843, dispose of the cases, the fine being only rupees 50 in each.

All that is proved in Goverdhun's case is, that he was taken to Chuprah, and Kasheenath Poora says, in his information, that he and Goverdhun were then taken to Salgurmoodea.

Now can the latter information be admitted as evidence for Goverdhun or not? or can a magistrate, as in this case, rely on an information or deposition given in another case to support a conviction? In my opinion he cannot, and therefore there is no evidence against Tripp in Goverdhun's case.

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 Under Act
 IV. of 1843, an
 appeal lies to
 the sessions
 judge from all
 sentences pass-
 ed by any jus-
 tice of the
 peace or ma-
 gistrate exer-
 cising such
 jurisdiction.

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In Kasheenath Poora's case, the evidence is still more defective. In his information, he refers to a deposition given by him before in Kishenmonee's case, and then says he has no witnesses. Seven days after he filed a *razeenamah*. He is mentioned by Goverdhun Pal, but to get *first* at his complaint, a reference must be made to Kishenmonee's case, and *then*, for evidence to his being carried to Chuprah, as well as to his being confined *elsewhere*, to Goverdhun's case.

The shortest and easiest test, for what I have not perhaps very clearly stated, would be for the Court to take up *one case*, and then decide if the conviction of the petitioner will stand on the record in *that particular case*.

The joint magistrate states he made the division of the cases, because the offence in each was distinct, and cites Construction No. 632. But neither that Construction, nor any rule of procedure sanctions, in my opinion, his convicting and sentencing a party on the unsupported information of the complainant or person made prosecutor.

He had much better have left the first case alone, or when he separated them, he should have taken the evidence of some of the co-sufferers in each case, and as this has not been done, the evidence, in my opinion, does not sustain the convictions, and as defective, they ought to be quashed in both cases.

I only refer these two cases as they are the most connected (if I may so express myself.) If the Court uphold these convictions, the rest must stand; on the contrary, if they are quashed, all the others must likewise be quashed, as the informations are in the same way unsupported by proof, except as to the discovery of the informants in the house of Gooroo-churn Biswas, and their being released by the *peadahs*.

In six of the other cases, there were also *razeenamahs*, and Mr. Tripp's mooktear says, they were filed in each case. Why they were rejected is not on the record, but will doubtless be explained by Mr. Beaufort * when furnished with a copy of this letter.

* Extract from a letter of the Joint Magistrate of Pubna, No. 342,
dated 5th October 1853.

The circumstances attending the institution of these cases are detailed in my letter* to you, No. 222, of the 23rd July last; and * Not published. as that letter is, I presume, filed with the record of the case, in which Kishenmonee was plaintiff, it will be unnecessary to recount them here. The Court will observe, that the prosecutors in these cases were ryots of the villages, regarding which disputes were pending between Mr. Tripp and another planter, and in which I was making a special investigation at the very time that they were seized and forcibly carried to Salgur-moodes factory.

The point on which you propose to quash my conviction in each case is, that the evidence recorded, beyond the deposition of the prosecutor, does not

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The case of Kishenmonee is also herewith submitted, as it was in fact the first complaint which led to the joint magistrate himself riding over from his camp to the Tribanee factory to look for the prisoners. It also contains my orders in the former appeal.

Resolution of the Nizamut Adawlut, No. 1388, dated 8th December 1853.—The Court, having perused the papers above recorded, connected with the case of Mr. Tripp, are of opinion that the sessions judge is competent to dispose of the appeal under Act IV. of 1843, though the sentence passed on the petitioner is a fine of only rupees 50 in each case. The Act is professedly so, for amending the law of appeals from justices of the peace and magistrates, acting under the Statute 53, George III., Chapter 155, and section I., provides that an

prove anything against Mr. Tripp. I contend that the evidence adduced, considered in connection with those facts, which it is unnecessary to prove, necessarily and unavoidably implicates him as the principal delinquent, in the illegal detention which you admit as established beyond doubt.

The fact established in each case is, that the prosecutor was released from the house of a servant of Mr. Tripp, while under illegal detention. He alleges that he was forcibly carried off from a certain village and detained in Mr. Tripp's own factory by Mr. Tripp's special order for a certain period, and then sent off to another factory, and thence carried to the house in which he was found. The person, in whose house he was found, could have had, (or at least we may fairly presume that he had) personally, no inducement to detain him, and the conclusion is, that the prosecutor's statement is correct, *viz.*, that he was seized and carried there by order of Mr. Tripp, who would undoubtedly make such use of the house of his servant.

If you apply to this case the rules of evidence of the English law, you will not refuse to admit the definition of a presumption. A presumption is, where, some facts being proved, another follows as a natural or very probable conclusion from them, so as readily to gain assent from the mere probability of its having occurred without further proof. The fact thus asserted is said to be presumed, that is, taken for granted, until the contrary be proved by the opposite party, "*Stabitur presumptione donec probetur in contrarium.*"

Mr. Tripp had evidently a particular object in view when he caused these men to be seized and detained. No one else had any such object, or at least no one connected with Gooroochurn Biswas. There may be a great difficulty in proving the seizure, there must be the greatest difficulty in proving that Mr. Tripp gave the order of detention, by positive evidence, hence the validity of the presumption.

But you omit, as I think, to consider the facts within the knowledge of the Court. Evidence is taken for the satisfaction of the court of first instance, not of the appellate court, and there can seldom be necessity for the record of evidence to prove what lies within the personal and official cogni-

* *Note by the Sessions Judge.* nizance of the presiding officer. In a case of contempt of court for instance, it is not, certainly not, as it is made in the face of the court. I imagine, necessary to take evidence to prove the fact.* On this ground I contend that I was justified in taking into consideration those facts connected with these cases, with which I was acquainted, and which I have detailed in the letter referred to above.

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appeal shall lie from *all* sentences passed by any justice of the peace, or by any magistrate upon conviction had before him, when exercising such jurisdiction as aforesaid. Act XXXI. of 1841, Section II., cannot apply to sentences passed under a statute. The words "subject to the same rules" refer to the rules regarding the ground upon which appeals are admissible, not to the limitation of appeals.

A few days since you deemed it right to reverse my order of conviction,

* Note by the Sessions Judge.
Without proof of what befel Mr. Beaufort, I did not credit the evidence to the extortion at all, as was stated in the first proceeding sent him.

in a gross case of extortion, for want of recorded proof of an accident which happened to me individually, as I could necessarily have no doubt of that which befel myself, so I never imagined that any proof of it would be held requisite.*

The same argument applies, I think, to the records of the court; what is proved in one case may be adduced as proved in another, especially where the defendant in both cases is the same. As, for instance, the depositions of witnesses taken before the magistrate, may, under certain circumstances, be given in evidence before the sessions court, if the defendant had the opportunity of cross-examination.* Such a course appears to me to be conformable to natural justice, and therefore I think that I was justified in admitting as a presumption in these

* Note by the Sessions Judge.
But in this case Mr. Tripp had not the opportunity.

cases a fact, which was proved by positive evidence in the case in which Kishenmonee complained against Mr. Tripp.

But setting aside the completeness of the evidence, I think you will agree with me, that there can be no moral doubt of Mr. Tripp's complicity in the oppression exercised upon the prosecutors. And if the Court should also be convinced of this, I would ask them, for the sake of the moral good to be derived from the convictions, not to interfere with them. At the most, the want of the due record of certain depositions, is a merely technical omission, which would not be understood by the mass, who knew the circumstances of the cases, and who knew the time and trouble which I expended on them, and the difficulty which I found in encouraging and re-assuring those who believed the Salgurmoodea concern to be more powerful than the constituted authorities. It is so unusual to find persons actually under detention, that an acquittal in these cases would, I think, have very bad results, and would lead to the confirmation of such fears on the part of the people.

I allowed each person to give a separate information against Mr. Tripp, because the offence, as against each complainant, was singular and distinct, and because I wished to retain the power to award a heavy fine in each case against Mr. Tripp, if he had persisted in his oppressive conduct. As he did not do so, I deemed it sufficient to award in the aggregate that amount only in which he was liable for one case.

As regards the *razeenamahs*, I knew that they were exacted by the influence of the landlords of the complainants, with whom Mr. Kenny, the proprietor of Salgurmoodea, had made up his differences. They gained individually, nothing by the compromise beyond the peaceful tenure of their *jotes* and personal exemption from such oppressions; and I was anxious to award the compensation which would bring home to all the proof that Mr. Tripp's power was not absolute. Moreover, it seems to me that *razeenamahs* should never be admitted when the rich have oppressed the poor, unless in the compromise the latter have been compensated for previous sufferings.

